The Lord Chief Juſtice Coke's *Opinion of*

REAL ACTIONS,

In the Preface *to the 8th Part of his* Reports.

THE neglect of Aſſiſes and Real Actions, hath produced Two Inconveniences in the Common-wealth, and a Third is (if it be not ſtept on already) like to enſue: 1. The multitude of Suits in Perſonal Actions, wherein the reality of Freehold and Inheritance is tried, to the intollerable Charge and Vexation of the Subject. 2. Multiplicity of Suits in one and the ſame Caſe, wherein oftentimes are divers Verdicts on the one Side, and divers on the other, and yet the *Plaintiff* or *Defendant* can come to no finite End, nor can hold the Poſſeſſion in quiet, tho' it be often Tried and Adjudged for either Party. And this groweth, for that the right Inſtitution of the Law is not obſerved, to the unjuſt Slander of the Common-Law, and to the intollerable Hindrance of the Common-wealth. In Perſonal Actions, concerning Debts, Goods, and Chattels, a Recovery or Bar in one Action, is a Bar in another, and there is an end of the Controverſie. In Real Actions, for Freehold and Inheritance, being of an higher and worthier Nature, and ſtanding upon greater Variety of Titles and Difficulties in Law, there could not be above two Tryals, or at the moſt (and that very rarely) three: and in the mean time, after one Recovery, the Poſſeſſion reſteth quiet. 3. The Diſcontinuance of Real Actions will produce, in the End, Two dangerous Effects, *viz.* Want of true Judgment in the Profeſſors of the Law, and groſs Ignorance in Clerks, of the right Entries, and Proceedings in thoſe Caſes.

THE LAW OF REAL ACTIONS:

In which is set forth, at large,

The NATURE of such *ACTIONS*, and the PRACTICE therein;

CONTAINING

The *Writs*, *Counts*, *Pleadings*, *Judgments*, and all *Proceß*, both *Original* and *Judicial*;

IN

A Writ of Right Patent,
——— of Right Cloſe,
——— of Right in *London*,
——— of Right of Dower,
——— of Right of Advowſon,
A Formedon,
——— in Deſcender,
——— in Remainder,
——— in Reverter,
Dower unde nihil habet,
A Writ of Entry in Nature of an Aſſiſe,
Writ of Intruſion,
Cui in Vita,
Ad terminum qui præteriit,
Ayel, Beſayel, Cozenage,
Aſſiſe of mort d'Anceſter,
Aſſiſe of novel diſſeiſm,
Juris utrum,
Quare impedit,
Quod permittat,
Warrantia Chartæ,
Partitione facienda.

With ſome RECORDS incerted, particularly relating to the Court before the Juſtice of the County Palatine of *Cheſter*, proving the Antiquity of that Court, and of ſome Families there.

By **George Booth**, Eſq;

LONDON: Printed by the Aſſigns of *Richard* and *Edward Atkins*, Eſquires; for *A.* and *J. Churchil*, and Sold by *Sam: Keble*, at the *Turk's-Head* in *Fleetſtreet*, 1704.

THE

Introduction.

THough Real Actions are now much worn out of uſe for the Recovery of Lands, yet the Learning concerning them is of no ſmall advantage for the true underſtanding of the original Cauſe of many Points in Law that do and may occur in daily Practice at this Day. And without ſome competent knowledge of this nature, it is not poſſible for any *to* be well grounded in the true reaſon of the Common Law, ſo as to be able to give ſound Advice in all Caſes that may happen, eſpecially relating to Titles of Land and Hereditaments. In the learning of theſe Actions, eſpecially in the learning of pleading therein, *Conſiſt in the Theory and Practick. In the Practick is Comprehended the nature of the Writ to be ſued forth, the Proceſs and Proceedings in the ſeveral Actions to Judgment. The Theory contains the*

learning of Pleading in the ſaid ſeveral Acti-ons. That is, how to Count, plead in Barr, to Reply, *&c. And in this* lies the marrow and reaſon of the Law, for in ſuch Caſes a Man muſt underſtand the nature of Titles to Land, by Conveyance, Deſcent, Diſſeiſin, Diſcontinuanee, Abatement, Remitter, where Entry is lawful, where not lawful. *I have in this Treatiſe attempted ſomething both as to the Finſt and to the Latter.* He that knows well how to plead well in real Actions, will know the better how to plead in many perſonal Actions, as in Actions of *Treſpaſs* and *Replevin*, where the Freehold comes in queſtion. By the pleadings in a *Quod permittat*, *Secta ad molendinum*, *Curia claudenda*, *&c.* the knowledge of pleading or declaring in Actions upon the Caſe for Ways, Markets, Commons, *&c.* Suit to the Milne, for Non-incloſure, may be had, and to plead Preſcriptions in ſuch Caſes. The like may be ſaid of moſt or many other real Actions. The Learning of Aſſiſes holds out fully the nature of Titles of Entry, whereby a Man may be ſufficiently inſtructed how to manage an *Ejectione firme*, which is now the Com

mon

mon Action for recovery of Lands where the Entry is lawful.

They are called Real Actions to distinguish them from Personal Actions which are grounded upon Contracts, Torts, &c. of Men one amongst another, for which Damages or something Personal is to be recovered, and these follow the Person. Real Actions are such as are for the recovery of the Freehold or Inheritance of Lands or Hereditaments, and these are either Purely Real or Mixt; Purely Real are such as are for recovery of Land only without Damages (for no Damages were recoverable by the Common Law in any Real Action) Mixt are such, as where both Lands and Damages are recoverable by the Common Law. As Assise of *Novel disseisin*, Writs of Entry, Attaint, &c. *Bro. Cost.* 29.

More particularly these Real Actions may be subdivided into divers Kinds. 1. Into Writs of Right. 2. Writs of Entry. 3. Writs of the Ancestours Possession, called *Possessory-Ancestrel*, and all those called *Præcipe quod Reddat's*. 4. Writs which contain no express demand in the Writ, *i. e.* no number of Acres or Messuages, and be-

gin

gin with these words, *Si A fecerit te securum, &c.* And the *Assise* of *Novel disseisin*: These are for the Recovery of Lands in *Demesne.*

6. Co. 11. Other Real Writs there are for recovery of Hereditaments, and for performing and doing other things concerning Lands and Hereditaments. Of the first sort are 1. A Writ of Right Patent, *&c.* Right Close, this is the purest and highest Writ of Right, 2. A Writ of Right of Dower, a Writ of Right *De Rationabili parte*, a Writ of Right *Sur Disclaimer.* Writs of Right in their nature are, The Writ of *Escheat*, *Formedons*, *Quod ei deforceat*, and some others. Of the second sort are, 1. Writs of Entry in the *Per*, *Cui*, *Post*, as Writs of Entry in nature of an Assise, 2. Writs of Intrusion, 3. *Cui in Vita*, 4. *Cui ante divortium*, 5. *Sur Cui in Vita*, 6. *Dum non fuit Compos mentis*, 7. *Dum fuit infra ætatem*, 8. VVrits of Entry at Common Law, 9. *Ad terminum qui præteriit*, 10. *Causa matrimonii prælocuti*, 11. *Sine assensu capituli*, Of the Third sort are, where the Anncstour (not being Father, Mother, Brother, Sister, Uncle, Aunt, Nephew,

or

or Neece, for of them a *Mortdanceſter* lies) died ſeiz'd, *viz.* The VVrits of *Ayel*, 2. *Beſayel*, 3. *Cozinage*. Of the Fourth ſort are the *Nuper obiit* and *Mortdanceſter*.

Thoſe for Recovery of other Hereditaments, and for doing and performing other things concerning Lands and Hereditaments are, 1. A VVrit of Annuity, 2. *Quare Impedit*, 3. *Juris Utrum*, 4. *Attaint*.

Errata

ERRATA.

P. 5. *l.* 14. *r.* at this day. *p.* 7. *l. ante penultima. r. in manum noſtram. p.* 9. *l.* 4. *r.* in Aſſe, *dele* (the) *p.* 12. *l.* 19. *r.* Amercement is of Courſe. *p.* 16. *l.* 16. *r.* fourch by Eſſoins. *p.* 23. *l.* 10. *r. Cumbermere. p.* 24. *l.* 2. *r.* in real *Præcipe quod. p.* 32. *l. ult. r.* 39 E. 3. 36. *p.* 38. *l.* 9. *r.* but to be allow'd in a Writ. *p.* 38. *l. ante penultima, r.* 2. Waſt. 3. Aſſiſe of *Nuſance. p.* 47. *l.* 7. from the bottom *r.* firſt Vouchee. *p.* 48. *l.* 8. from the bottom *r.* Voucheth them the Cauſe &c. *p.* 50. *l.* 12. *r.* Counteuanc'd by the Law. *p.* 51. *l.* 7. outed great delays. &c. *p.* 56. *l. ult. dele* theſe words, *viz.* (ſo that the *Common Pleas* cannot admit of a Voucher over) then *r.* and delay to be given, &c. *p.* 57. *l.* 6. from the bottom *r. Feſt. beat. Mariæ. p.* 58. *l.* 7. *dele* theſe words, *viz. Vid. Contra f.* 56. *p.* 60. *l.* 4. *r.* ſhew a Charter, &c. *p.* 64. *l. ult. r. Vid. antea, c.* diſtreſs. *p.* 76. *l.* 18. *r.* and the learning here of is, &c. *p.* 85. *l.* 8. *r.* Entry of the Demandant is, &c. *p.* 132. *l.* 25. *r. Juſticies. p.* 147. *l.* 13. *r. reliquit veriſicationem.* 147. *l.* 21. *r.* and at the Return. *p.* 155. *l.* 2. *r. pd. L. obiit. p.* 155. *l.* 18. *dele* (*fil. & hæred. L.*) *p.* 158. *l.* 26. *r. pro prox' p.* 159. *l.* 6. *r. pro prox'. p.* 160. *l.* 8. *r. pro prox' p.* 160. *l.* 11. *dele* (Another Rule) *p. ibidem. l.* 18. *r. pro prox'. p.* 170. *l.* 12. For *avint r.* Flint. *p.* 178. *l. ult.* for only remedy *r.* ordinary remedy. *p.* 249. *l.* 16. *dele* theſe words, *viz.* Writ of Covenant to levy a Fine. p. 250. *l.* 9. *r.* the Grantee cannot, &c. (for Cognizee cannot) *p.* 261. *l.* 9. *r. idem A. capiatur.*

BRITISH MUSEUM OCT 27

OF REAL ACTIONS In GENERAL

CAP. I. LIB. I.

Where to be sued forth.

When a Real Action is to be brought for the Recovery of Lands or Hereditaments, the Original Writ is in the first place to be sued out of the High Court of Chancery, which is called the Officina Justiciæ; and that kind of Original must be sued forth as is most agreeable to the Nature of the Cause duly considered according to the Rules of Law. Wherein observe some Cases may admit of several Remedies, and one Real Writ or another may be brought at the Election of the Demandant, as a Nuper obiit, or a Mortdancester, an Assize of Novel Disseisin, or a Writ of Entry in Nature of an Assize, a Mortdancester or a Formedon in Remainder, and many others, as the Case may be.

29 H. 8. 59. 11 H. 4. 55. Co. lib. 2. 61. a. Co. lib. 6. 7. b. Election of Actions.

What Actions first to chuse.

But this is to be observed as a Rule, that where there may be such Election, it is the most prudent Course to chuse that Writ which is of the lower, rather than that of an higher Nature; for a Recovery in that of a lower Nature will be no Bar to an Action of an higher Nature. Whereas on the contrary, a Recovery in the higher Action may be a Bar to that of a Lower Nature; and therefore not prudent to sue forth a Writ of Right, when you may have a Writ of Entry; or a Writ of Entry, when you may have a Mortdancester, Ayel, Besayel; or these where you may have an Assize of Novel Disseisin: and so of other Writs pari ratione.

Co. lib. 6. 7. b. 8. a. Dyer. 5. Co. lib. 4. 43. 9 H. 7. 23.

2. Every Writ generally must have 15 days at the least between the Teste and the Return.

In what County to be laid.

3. By the Law, every Real Writ, for the most part, must be brought in the County where the Land lies, Bract. 189. & 4 [illegible] If the Land lie in several Counties bordering one upon another, the Writ must be thus brought in Comitatu Comitatus: and it's said, it ought so to be mentioned in the Writ, 35 H. 6. 30.

The Order of things in a *Præcipe.*

4. In every Præcipe quod reddat an Order is to be observed in placing the things demanded in the Writ; the more worthy Thing should always be placed before the less worthy, the General before the Special, and the Intire before its Parts. Therefore Land upon which a House is built, being for the Habitation of Man, is more worthy than Land without building; and therefore a Messuage shall be first demanded, and of Messuages a Castle before other Messuages, and before a Manor, though it be part of a Manor, 1 E. 3. 4. 7 H. 6. 39. So Land shall be demanded before Meadow, Pasture, Wood; for Land is the Genus to these; and so Boscus, Wood, shall be demanded before Alnetum, Salicetum, which are but Species of Wood. So the Intire shall be demanded before the Moiety, or other Part, F. N. B. 4. Regist. The Order of things to be demanded in a Præcipe, is comprehended in these Verses, viz.

Messuagium, Toftum, Molendinum, Columbare, Gardinum,
Terra, Pratum, Pastura, Boscus, Bruera, Mora.
Juncaria, Mariscus, Alnetum, Piscaria, redditus sectare priora.

What words to be in a *Præcipe.*

5. In every Writ of Entry of his Ancestors Possession, he who demands the Inheritance, must say in the Writ (Quod clamat esse Jus & hæreditatem suam) but not if he be Tenant in Tail, or for Life. But in declaring he must shew his particular Estate, F. N. B. 201. Nor he who claims of his own Possession, except it be in a Cui in Vita, or Cui ante divortium.

Bis petitum.

6. If one thing be twice demanded (called bis petitum) in one and the same Præcipe, the Writ shall abate; as to demand a Manor and Rent, if the Rent be parcel of the Manor, the Writ shall abate, 3 E. 3. 85. So of a Manor and an Advowson, if the Advowson be appendant to the Manor, 6 E. 3. 267. M. 33 E. 3. Br. 919. So in a Formedon of a Manor, and of a Messuage and Land, if the Messuage and

Land

Land be Parcel of the Manor, the Writ shall abate, 46 E. 3. 26. 9 H. 6. 42.

1. In every Præcipe quod reddat must be alledged where the Land lies, and this must be in a Vill, or Lieu conus, and not in an Hamlet, 9 E. 4. 36. 8 E. 4. 6. 34 H. 6. 18. Otherwise in personal Actions it may be in an Hamlet; and so in Dower, where no Land in certain is demanded: And also in Assize it may be in an Hamlet, because the Recovery shall be by View of the Jurors; and so in a Scire fac' out of a Fine, Nuper obiit, Writ of Meine, Covenant, Waste, Quare Impedit, these may be in an Hamlet, 17 E. 3. 56. 18 E. 3. 11. but otherwise it is of a Writ of Right of Advowson, 9 E. 4. 36.

The Writ must alledge the Vill where the Land lies.

These Real Writs lie only against the Tenant of the Freehold; and therefore Non tenure of the whole, or of parcel, Joyntenancy with another not named in the Writ, Intire Tenancy of the whole, or Several Tenancy, of Parcel when the Writ is brought against two or more, are good Pleas in Abatement at Common Law; but now by the Statute of 25 E. 3. c. 16. Non tenure shall not abate the Writ but for the Quantity, Lit. 115. 19 H. 6. 32. 37 H. 6. 8. 27 H. 8. 30.

Tenant to the *Præcipe*.

In these Real Actions he who brings the Writ, is called Demandant, and he against whom it is brought, Tenant.

Demandant, Tenant.

For the more distinct and certain Knowledge of the Nature and Proceedings in these Actions, I purpose this Method following: First, To set forth something of the Nature of those things that are Incidents to these Real Actions before Appearance of the Tenant: And under this Consideration I shall take, 1. Summons. 2. Attachment. 3. Distress. 4. Default. 5. Grand Cape. 6. Saver Default.

Incidents before Appearance.

2. Such as are Incidents after Appearance concerning the Writ, as, Summons and Severans, Non tenure, Sole Tenancy, Several Tenancy, Imparlance.

After Appearance.

3. Such as are Incidents after Appearance before Pleading to the Action, as, View, Essoin, Voucher, Counterplea of Voucher, Counterplea of Warranty, Aid Prier.

After Appearance before Pleading.

After Appearance and Pleading.

4. Such as are after Appearance and after Pleading, as, Essoin, Default, Petit Cape, Receit, Departure in despite of the Court, and Judgment.

Particular Actions.

Having gone through these which generally concern all Real Actions, I shall descend to particular Writs distinctly under a several Head: And in Prosecution of this Purpose, I shall first, for Order sake, begin with Writs of Right, then proceed with Writs of Entry, and lastly to some other particular Writs promiscuously; and in the Tract of every particular Writ, shall endeavour first to shew the Nature of the Writ, and the several Kinds of it, if it be divisible. 2. Then the incident Process before and after Appearance. 3. Some Rules of Law, especially of Pleading concerning that particular Writ or Action.

CAP. II.

Of Summons.

Summons the first Process in all *Præcipe quod Reddats.*

THE Original Writ in Real Actions, commands the Sheriff to summon the Tenant to answer the Demandant at a certain Day. And this is the first Process in all Præcipe quod Reddats, which run thus, viz. Præcipimus tibi quod summ' per bon' summonitor' *J. B.* qd' sit, &c. and therefore the Entry upon Record, after Appearance, is in all those Writs thus, viz. *J. S.* summonit' fuit ad respondend' *T. B.* de pl'ito qd' reddat, &c. according to the Nature of the Writ; this is as much as Vocatio ad Jus, or Citatio amongst the Civilians.

By whom and how many to be made.

This Summons in Real Actions must be made by two Summoners at the least, 8 H. 6. 5. 35 H. 6. 46. And they must be liberi & legales homines, that they may testifie the Truth of the Summons, if they come to be examined by the Justices, Fleta lib. 6. c. 6. Co. lib. 6. 158. b. Fleta lib. 4. c. 5.

This

This Summons is to be made by the Sheriff or his Bailiff, either to the person of the Tenant, or upon the Land demanded, and there with the Summons warn the Tenant to appear and answer; and then the Sheriff is to return the Writ and the Summons, 37 H. 6. 26. How the Sheriff is to demean himself in summoning the Tenant upon the Land, Vid. Dalton's Office of a Sheriff, 149. Fleta ibid. Vid. 43 E. 3. 1. The Formalities. How to be made.

When Real Actions were ordinarily used, antiently the Summoners were Persons that were actually imployed by the Sheriff for that purpose, and their Names return'd; whereas generally now no actual Summons is really given, but Names of Summoners of Course return'd by the Sheriff upon the Writ; but if the Tenant at that day should come to wage his Law of Non-Summons, such Summons of Course would not support the Writ. Vid. Modern Rep. 248. *Searl versus Long.* Summons actually made formerly.

By the Statute of 31 Eliz. c. 3. In Real Actions Proclamation must be made fourteen days before the Return of the Writ Die Dominico after Divine Service and Sermon, &c. which Proclamation the Sheriff must return with the Names of the Summoners, or no Grand Cape shall issue, but un' al' Summons or Plur'; and so far as to the Proclamation the Common Law is altered. Proclamation, *Stat.* 31 *Eliz. c.* 3.

None shall be summoned to appear to answer forthwith in Real Actions, ad starim respondendum, as Fleta expresses it, Fleta lib. 6. c. 6. But there shall be Fifteen Days at least between the Summons and the Day to appear and answer; and this is provided by the Statute of Articuli super Chartas, c. 15. 25 E. 1. which is but in affirmance of the Common Law, Co. 2. Inst. 567. And the reason of so many Days was, because so many Days Journey (Twenty Miles being accounted a Days Journey called Dieta) the Common Law did account a reasonable time for him that was summon'd or attach'd to appear in any part of England wheresoever the Court of Justice sate, Bract. lib. A. f. 235. 19 H. 7. c. 1. Co. 2 Inst. 567. Fifteen days between Summons and the Test of the Writ.

If

Default, then *Grand Cape.*

If the Tenant do not appear, being legally ſummon'd (this is called a Default) a Writ call'd a Grand Cape ſhall be award'd againſt him; at the Return of which, if he do not appear, and ſave his Default by Non-Summons, or other lawful Excuſe for his Non-appearance (if the Demandant will ſtand upon the Default) the Demandant ſhall have Judgment to have Seiſin of the Land. But of this more ſhall be ſaid in Default, Grand Cape, and Saver Default, Fleta lib. 6. c. 6. 379. 50 E. 3. 16. 38 H. 6. 33.

Summons in Judicial Writs:

There are Judicial Writs in the Proceedings in theſe Actions, which require the Party to be ſummon'd, as well as the Originals, as Summons ad warrantizand, Cape ad Valentiam, Grand Cape, Petit Cape, Petit Cape ad Valentiam, of which in their proper Places.

Summons in *terra petita.*

In a Præcipe quod reddat againſt Tenant for Life, if he in the Reverſion be pray'd in Aid, and the Sheriff return (Nihil) upon the Scire Fac', or Summons ad Auxiliand', but that he ſummoned him in the Land demanded (in terra petita) it's good, 12 H. 4. p. 5. 38 Aſſ. p. 18.

The Entry of Summons upon Record before Appearance, is thus, *viz.*

Salop. ff.

Record.

Præceptum eſt Vic' qd' ſum' per bon' Summonit' *B.* qd' eſſet hic ad hunc diem ſcilicet ad reſpondend' *A.* de placito qd' reddat ei unum Meſſuagium cum pertinen' in *C.* &c. Et modo ad hunc diem ven' prædict' *A.* in propr' perſona ſua. Et Vic' modo mand' qd' prædict' *A.* non invenit ſibi pleg' de proſequend' &c. Ideo ſicut prius præceptum eſt Vic' qd' ſum' per bon' ſummonit' prædict' *B.* qd' ſit hic tal' die ad reſpond' præfat' *A.* de prædict' pl'ito, *Raſt. Entr.* 362. *a.* Novel. Imprint.

This al' Summons is a Judicial Writ, and is made upon the Original by the Prothonotary when the Summons for ſome Special Cauſe is not return'd by the Sheriff upon the Original, as for not giving Pledges, as in this Preſident, or where the Sheriff returns Tarde, or the like, Regiſtr. Judicial. 56. b. & 2. b.

The

The Entry of an *al' Summons* upon a *Tarde* return'd, is thus:

Salop' ſſ. Præceptum eſt Vic', &c. qd', &c. Et modo ad hunc diem ven' pd' *A.* per *L.M.* Attorn' ſuu' (vel in propr' perſon' ſua) Et Vic' tunc mand' qd' bre' adeo tarde, &c. per qd' ſicut prius præcept' fuit Vic' qd' ſum' pd' *B.* quod eſſet hic, &c. Raſt. Entr. 417. a. Journey's Accounts A

In all Præcipe quod Reddats, which are properly and ſtrictly Pleas of Land, Summons is the firſt Proceſs, and Grand Cape in Caſe of Non-appearance; in other Real Actions, or ſuch as favour of the Realty called Actions in the Realty, the Proceſs is in ſome of them Summons, Attachment and Diſtreſs infinite, as in a Writ of Annuity, Quare Impedit, Quo Jure, Qd' permittat, &c. And ſometimes the Diſtreſs is in lieu of a Grand Cape, as in a Quare Impedit, by the Stat. Dyer 241. and ſometimes for a Petit Cape. In others Summons and Reſummons, as in a Mordancester. In others Attachment and Re-attachment, as in an Aſſize of Novel Diſſein, and Aſſize of Nuſans.; but of theſe, in their proper Places. 21 H. 6. 56. F. N. B. 189. English F. N. B. 38. Raſt. Entr. 76. Proceſs in *Præcipe qd' Reddas*, firſt is Summons; what in other Real Actions.

Where the Proceſs is Summons, Attachment and Diſtreſs, the Sheriff may ſummon the Party by his Lands, Goods or Perſon, 22 H. 6. 38. Br. Summons 1. 34 H. 6. 49. Summons may be by Lands, Goods or Perſon.

After Summons is Attachment, where Summons and Attachment lie in Proceſs; and therefore of that next in Order.

But note, That in every Præcipe qd' Reddat, the Sheriff is commanded thus: Præcipe *T. B.* quod reddat *L.M.* un' Meſ. &c. So that the Sheriff by the Letter of the Writ is firſt to command the Tenant to render the Land before he ſummon him. This is not to be underſtood of a Render in Pais, for nothing can veſt in the Demandant by it, but it is to be underſtood of a Render in a Court of Record. Vid. Kelw. Rep. 116. b. So that they are but words of Form, as the words Cape in manum meam in a Petit Cape, or Grand Cape, or Diſtrigas per omnes terr', &c. in a Diſtringas, &c. ibid. Vid. Co. lib. 5. 49. a.

CHAP.

CHAP. III.

Of Attachment.

Quoduplex.

ATtachment in the Laws of divers acceptations. In the ordinary acceptation it is a Writ to take the Body to answer to some Contempt done to a Court; or to answer to some Action where commenced, and differs nothing from a Capias: But an Attachment in the General may as well be against the Goods as the Body, and so differs from a Capias; as a Man may be attach'd by an Ox or 100 Sheep, Kitchin fol. 263.

What in Real Actions.

An Attachment after a Summons in Actions Real, is a Process to take Surety of the Defendant by certain of his Goods, to appear and answer the Action in such a Court; where if he appear not, he shall forfeit his Goods. And this Attachment must be by meer Personal Things, and not Real Chattels, nor Parcel of his Freehold, and in this differs from a Distringas; and they are to be the Defendant's own proper Goods, and not borrowed, or Goods pawn'd; and the Property of these Goods is not out of the Party, till he make default, 7 H. 6. 10. 27 H. 6. 2. 9 H. 7. 9. Br. Attachment 20. Co. 2. Inst. 254. Stat. W. 1. c. 45.

The Form of this Process is——

Writ.

Rex Vic' *B.* salutem, &c. Pone per Vad' & salvos plegios *J. S.* quod sit coram Justic', &c. ad respondend' B. de plito', &c. Et habeas ibidem no'ia pleg', &c. & hoc bre' Test', &c. **This is Judicial, and is made by the Prothonotary.**

May issue after an Essoine.

This Process may issue upon Default after Summons return'd by the Sheriff, or after Summons and an Essoine cast, and at the Day of the adjournment of the Essoine, if the Tenant do not warrant his Essoine, Rast. Entr. 520. b.

Upon

Upon this Writ the Sheriff may take Surety by Pledges, or attach him by his Goods. Br. Attachment 1. 7, 9. Attachment by Goods or by Pledges.

This Attachment ought to be fifteen Days between the Teste and the Return, save in the Assize, and except some particular Jurisdictions, where the Process by Custom, or Act of Parliament, are Returnable de die in diem, as in the County Palatine of Chester and elsewhere. Br. Attachment 1. 5, 6. Co. Lit. 134. b. 15 days between the Teste and the Return.

Nient Attach' per fifteen Days, shall be tried by Examination of the Officer who made the Return, and if he be absent, the Attachment shall be he intended to be good; and the Tenant shall be awarded to answer. Br. Attachment 6. 12, 17, 18. Co. lib. 9. 31. *Nient attach'* how to be tried.

If the Sheriff take Sureties by Pledges, then the Return of the Attachment is thus: Return of the Attachment.

Infranominatus *J. S.* attachiatus est.

Per Pleg' { *J. D.* / *J. M.*

Or the Sheriff may return the Tenant attach'd by his Goods, thus——

Infranominatus *J. S.* attachiat' est.

Per Patellam ad valentiam 10 *d.* vel
Per Vaccam pretii 30 *s.*

Note, No Pledges where attach'd by Goods; otherwise in Distress.

A Clerk ought to be attach'd by his Person or Lands (if he have any Lay-fee) and not by his Goods. Fitz. Retorn. 23. Clerk how to be attach'd.

The Certainty and Value of the Goods attach'd, ought to be returned. Dyer 199. Anderson's Rep. f. 51. Case 127. The value of the goods attach'd.

Record. After the returning of the Summons upon the Original, to the awarding of the Attachment, the Entry is thus——

Norf. ff. Record. *J. S.* per *L.* Attorn' ſuum obtul' ſe quarto die verſus *J. D.* de pl'ito, &c. Et ipſe non ven', & ſum', &c. ipſ' attachar' quod ſit hic in Octab' St'i Hillar' ad reſpond' &c.

Entry in *Cheſter.* The Entry in the Common Pleas in the County Palatine of Cheſter, is the like, ſave the words (quarto die) and the time of the Return.

All intended where Attachment lies in Proceſs in Real Actions. All that is before ſaid, is intended of Attachment in ſuch Real Actions where the Proceſs before Appearance is Summons, Attachment and Diſtreſs; for in ſome Real Actions, as in Deceit, the firſt Proceſs or Original, is an Attachment, and begins, Si *A.* fecer' te ſecurum de clamore ſuo proſequendo tunc pon' per vad', &c. and after a Diſtreſs.

The meaning of returning Pledges. If the Tenant do not appear upon the Return of the Attachment, then the Pledges are amerced, Ideo ip'i in mia', &c. for the Pledges do undertake the Defendants ſhall appeare; but Pledges are now feign'd Perſons return'd of Courſe, and ſo the Commencement is of Courſe,

The Pledges to be amerc'd in caſe of default. So note, That the Pledges are only to be amerc'd, if the Tenant do not appear. Vid. Raſt. Entr. Q. Imp. 520. in Proceſ. Vid. Leon. 2 p. 185. Crompt. Juriſdict. of Courts 169.

Enty *Io' ipi' in mia'*, &c.

How the Entry muſt be when return'd attach'd by Goods. This is to be underſtood where the Sheriff returns the Attachment by Pledges; for where he returns the Attachment by Goods, there the Entry is not qd' ipi' in mia', becauſe there are no Perſons to be amerc'd but the Tenant, qd' ipſe in mi'a, &c. and the Value of the Goods to be eſtreated. Quær' the Entry. Vid. Dyer 199. 34 H. 6. 29. The Goods are to be forfeited. The Entry is in Dyer 199.

CHAP.

CAP. IV.

Of Diſtreſs.

Grand Diſtreſs in lieu of a Pa. Cape at Com. Law.

IN Real Actions where the Proceſs is Summons, Attachment and Diſtreſs, if the Tenant do not appear at the Return of the Attachment, then is awarded a Diſtreſs or Diſtringas; and this is made by the Prothonotary upon the Return of the Attachment, and runs thus——

Diſtreſs when to be awarded.

Rex Vic' *B.* ſal'tem, &c. Præcipimus tibi quod diſtring' *J. B.* nuper de, &c. per omnes terras & catalla ſua in Balliva tua ita qd' nec ipſe nec aliquis per ip'm ad ea manum appon' donec aliud a nobis inde habueris præceptum. Et qd' de Exitibus eorum nobis reſpond' ita qd' hab' corpus prædict' *J. B.* coram, &c. ad reſpondend' *J. B.* de placito, &c.

The Writ,

Brew de Diſtringas.

Diſtreſs is divided by Britton c. 71. into Perſonal and Real; Perſonal is the diſtraining all the moveable Goods of the Party, and the ſeiſing by the Sheriff all the Profits of the Land from the Teſte of the Writ; which being return'd by the Sheriff, are called Iſſues, and for not appearing, are forfeited to the King, and eſtreated into the Exchequer. This is the Diſtreſs here intended. Fitz. 59. b.

Diſtreſs *quotuplex.*

Real Diſtreſs is that which is made only upon the Land, and cannot be taken by any common Perſon out of the compaſs of his Fee, as diſtreſs for Rent. Ibid.

Diſtreſs Real.

Diſtreſs is further divided into Finite and Infinite; Finite is for ſome certain times, as once or twice, &c. Infinite, without Limitation of time, till Appearance. 52 H. 3. c. 7.

Diſtreſs *Finite & Infinite.*

And it is likewiſe divided into Grand Diſtreſs, and Ordinary Diſtreſs. This Grand Diſtreſs ſeems to be the ſame with Diſtreſs Infinite. Brit. c. 26. f. 52. 52 H. 3. c. 7. 9. & 12. Co. 2. Inſt. 254. But I rather think that it's called Grand Diſtreſs when it is awarded in lieu of a Grand Cape.

Grand Diſtreſs and Ordinary.

Why call'd Grand Diſtreſs.

Grand Diſtreſs in lieu of a *Petit Cape* at Com. Law.

In ſome Real Actions for Default after Appearance, a Grand Diſtreſs iſſued in lieu of a Petit Cape, at the Common Law, as in a Quar' non admiſit, Convenco'e, Quar' incumbravit, Warrantia Cartæ, contra form' Feoffamenti, Contributione faciend', Quar' ſe intruſit, Quo jure, Secta ad molendinum, 2 H. 4. 1. b. 30 H. 6. 8. 2 Inſt. 254.

Diſtreſs in lieu of a *Grand Cape*.

And in ſome Real Actions for Default before Appearance and after Summons and Attachment, the Diſtring' ſhall iſſue in lieu of a Grand Cape, by the Statute of W. 1. c. 45. generally, by the Statute of Marl. c. 12. in a Quar' Impedit; and this is called Diſtreſs Peremptory, as in Admeaſurement de Dote, by the Statute of W. 2. c. 14. Admeaſurement de Paſtur', Quod permittat, Warrantia Cart', Bre' de Rect' Cuſtod', Vaſto & Medio, 30 H. 6. 8. 2 *H.* 4. 1. b. Dyer 241.

Difference between ordinary *Diſtring'* and *Grand' Diſtring'* in lieu of a *Grand Cape*, and from that in lieu of a *Petit Cape*.

The Writ of Diſtring' in lieu of a Grand Cape, is of the ſame Form with the Ordinary Diſtring', ſave that it is not only to conſtrain the Tenant to anſwer to the principal Plea, but likewiſe ad audiend' judic' ſuum de pluribus defaltis; but that in lieu of a Petit Cape is only ad audiend' Judic' ſu' de plur' defalt', without anſwering to the Action. Fitz. 94. b. 52 H. 3. c. 9.

Retorn of the Diſtreſs.

The Return by the Sheriff of the Diſtring', is thus——

Manucap' infranominatus *J. S.* { *J. M.* / *J. L.*

Unde Exitus xx *s.*

Vel aliter. T. S. diſtrict' eſt per terr' & catall' ſecundum formam hujus bris' unde exit' 20 *s.*

Et manucapt' eſt per { *J. L.* / *J. G.*

T. B. Vic'.

Vel aliter. J. S. nihil habet in balliva mea per quod diſtring' poteſt, nec eſt invent'.

Where

Where a Diſtreſs may iſſue in lieu of a Petit Cape or Grand Cape, if the Sheriff return Iſſues, or Nihil, and default be made, Judgment ſhall be given againſt the Tenant or Defendant, as in a Warrantia Cartæ, Secta ad molendinum. Co. 2 Inſt. 254. 389. 124.

Judgment upon the Diſtreſs in lieu of a Gr Cape or Petit Cape.

Note that now ſince the Statute of W. 2. c. 45. where a Diſtringas may iſſue in lieu of a Petit Cape at Common Law for default after appearance; a Diſtringas in lieu of a Grand Cape may iſſue for default before appearance.

Stat. W. 1. c. 45. Diſtreſs given in lieu of a Grand Cape, where in lieu of a Petit Cape at Com. Law.

But where a Diſtringas is given by the Statute, in lieu of a Grand Cape, it does not therefore follow that a Diſtringas may be awarded in lieu of a Petit Cape, as may appear, Co. 2 Inſt. 390. 7 H.4. 15. 12 H. 4. 3, 4. In waſt a Diſtringas is given by the Statute of W. 2. c. 14. in lieu of a Grand Cape, but it does not extend to give a Diſtringas after an appearance, in lieu of a Petit Cape.

W. 2. c. 14. gives Diſtreſs in lieu of Gr. Cape, but not in lieu of a Petit Cape.

The Entry of awarding a **Diſtringas** is thus——

Præcept' eſt Vic' qd' Diſtringat J. B. per omnes Terr' &c. Ita qd' de exitibus &c. Ita qd' habeat Corpus ſum cora' Juſtic' noſtris apud Weſtmonaſter' in Octab' Hillar' ad reſpondend' C. D. de plito' quare cum (as in Waſte) ut dic' & ad audiend' judic' ſuum de plur' defalt', & qd' habeat, &c. Salop. ſſ. Record.

The Entry upon Record upon default before Appearance, upon Return of the Diſtringas in a Writ of waſte——

A. op' ſe quarto die verſus B. de plito' quare cum de Commun' Conſilio &c. & ipſe non ven' Et præcept' fuit Vic' qd' Diſtring' eum &c. & Vic' modo mand' qd' diſtrict' eſt per Catalla ad valent' 10 s. & manucapt' eſt per I.M. & I.B. Ideo ipſe in mia' &c. And then the Plaintiff ought to declare before the Writ of Inquiry of Waſte is awarded thus--Et ſuper hoc pd' A. dicit qd' cum &c. Et inde produc' Sect' &c. Ideo præcept' eſt Vic' qd' in propr' perſon' ſu' acced' ad pred' ten'tum vaſtat' & cora' eis Venire fac' xii. &c. Raſt. Entr. 697. Salop. ſſ. Record. Judgment upon the grand Diſtreſs.

So in a Quar' Imp' and needs not to Declare before the Writ of Inquiry, as in Waſt. per Co. 2 Inſt. 125. yet in Raſt. Entr' Where the Pl. in Q. Imped' muſt declare before a Writ of Inquiry, as in Waſte.

Entr. 504. There the Plaintiff Declares before, which, is softest as I conceive, Vid. Rast. Entr. 507. a So in a Writ of Mesne. Rast. Entr. 434.

Entry of Judgment upon default, after Appearance upon the Return of the Distringas.

Norfolk ss. Et ipse non Ven' & habuit inde diem hic, ad hunc diem scil' &c. Postquam als' Comperuit hic in Cur', Ideo Distring' quod sit hic tal' die, &c. Ad quem diem Vic' mand' quod district' est, &c. Et ipse *A.* non ven' &c. Io. Consideratum est &c. Et pd' *I. M.* et *J. B.* in mia', &c. Rast. Entr. 226.

Record.

CAP. V.

Essoine

Essoine, what. 1. ESsoine, *Essonium* from the French Essonier or Exonier, to excuse, and is an allegation of an Excuse from him that is Summon'd, or ought to Appear and Answer to an Action, and saves his Default for that time, for some just Cause of his absence, as sickness, &c. and this is as well for the Plaintiff as Defendant in personal Actions, and for the Demandant as Tenant, in Real Actions. Co. 2 Inst. 125. Fleta lib. 6. c. 7. 8.

The kinds. 2. There are five kinds of Essoines. 1. De servitio Regis. 2. In terram sanctam. 3. Ultra mare. 4. De malo lecti. 5. De malo veniend'; and this last is called the Common Essoine. ibidem.

The ground of Essoines. 3. And these Essoines or Excuses of Appearance, were provided by the Law to the end no person might be surpris'd and prejudic'd by his absence; in case he had just cause to be excused by any thing that was not through his own default. Fleta, ibidem.

4. There

4. There are some other more special Causes of Excuse to save default in real Actions, as Vis hostiu', si incidat in latrones, Impetus fluminu', fractur' pontiu', &c. But of these in their proper place in saver default. Fleta, lib. 6. c. 7. 382. Other sorts of Essoines.

5. These Essoines are allowed both before and after appearance, before and after issue joyn'd; some of these Essoines lie not in some Actions, and others are limited as to number, (i. e. how many Essoines shall be) and time, and persons by several Acts of Parliament, and some persons by the Common Law ought not to be Essoined in some particular Cases, as after Summons in a Grand Cape, the Tenant shall not be Essoin'd by the Common Essoine, because he shall answer to the first default. Fleta. lib. 6. f. 396. c. 14. and many others, of which, see Fleta lib. 6. c. 9. 10. Where Essoines are allowable.

6. No Essoine de Servitio Regis shall be cast in 1. Dower. 2. Quare Impedit. 3. Assise of darrein presentment. 4. Assise of Novell disseisin. Co. 2 Inst. 124. 39 H. 6. 40. Stat. of Essoines, 12. E. 2. Essoine de Servitio Regis, where not allowable.

7. But an Essoine de Servitio Regis may be allow'd after a Grand or Petit Cape, or distress taken upon the Goods or Lands by the Stat. of Essoins, 12 E. 2. Rast. Entr. 316. b. See the Stat. of Essoines; several Cases wherein Essoines shall not be allow'd. Where allowable.

8. By the Stat. of West. 1. c. 42. The Common Essoine shall not be allow'd in Mortdanceſt', Juris Utrum, and Attaints after appearance, and this was for the Tenants Essoine. And by the Stat. of West. 2. c. 28. the Demandant shall not Essoine in those Writs, after an appearance. Vid. Co. 2 Inst. 248 & 418. and the reason was because of the great delay and charge of the Jurors which appeared the first day in those Writs. Where the Common Essoine not allowable.

9. In the Essoine de servitio Regis, and the rest of the Essoines (except the Common Essoine) he who casts the Essoine, shall be Sworn of the truth of his Essoine, by the Common Law in all Essoines before the Stat. of Marl. c. 19. But yet at this day the Essoiner, shall warrant his Essoine by Oath in all the former Essoines, but the Common Essoine, because of the great delay which was a year and a day. Co. 2 Inst. 137. In what Essoins the Essoiner must be Sworne.

10. By

W. 1. c. 44. where an Essoine shall be turn'd to a default.

10. By the Stat. of West. 1. c. 44. If an Essoine ultra mare be cast, the Demandant may challenge the Essoine, and if it be found that the Tenant was within the four Seas the day of the Summons and three weeks after, the Essoine shall be turn'd to a default, so as the Tenant shall lose his Land, by reason of the great delay given to the Demandant. Co. 2 Inst. 253.

When the challenge shall be averr'd.

11. The Demandant shall be receiv'd to averr his Challenge, at the day the parties have by the Essoine. 3 E. 3. 29. 28 H. 6. 3.

Essoine de malo lecti, turn'd to a default.

12. And by the Stat. of Westm. 2. c. 17. the like Law is made for an averment by the Demandant and Plaintiff, against an Essoine de malo lecti, which will be turned to a default, if the Essoine be false. Co. 2 Inst. 393.

Fourching by Essoine.

13. At the Common Law, where Parceners or Joint-tenants were sued, to delay the Demandant, they might fourch Essoines, i. e., When they had every one, one Essoine, they used to Essoine again by successive Essoines; as in a Præcipe quod reddat, against A. B. C. A. Essoines, B. and C. appear, and have idem dies given them, at which day A. and C. appear, and B. Essoines and have idem dies given them, at which day B. and A. appear, and C. Essoines; this is lawful at this day, but then at that day B. and C. appear; and A. Essoins again, this is Fourching by Essoine, and this is now remedied by the Stat. of W. 1. c. 43. Co. 2 Inst. 250.

W. 1. c. 43. Fourching by Essoines remedied. Stat. Glouc. c. 10.

14. This Act of W. 1. c. 43. extended only to Parceners and Joynt-tenants, and not to Baron and Feme, and therefore the Statute of Glouc. c. 10. was made to prevent fourching by Essoine, where Baron and Feme were Tenants. Both these Statutes extend only to Real Actions. Co. 2 Inst. 321.

The

The Entry of an Essoine upon the Essoine Roll is thus:

I. S. versus B. de plito' ter' per A. M. in Octab. &c. — Derb. ff. Record

W. versus P. de plito' terr' per W. C. in Octab. &c. — Salop. ff. Record

I. qui est in servitio Domini Regis versus R. de plito' terr' per N. in Octab' &c. — Salop. ff. Record

Essoine of a Praiee in Aide——

Exigitur R. at E. sine quo pd' I. at M. et R. fil' T. frater W. G. sine quo pd' W. G. respondere non possunt qui quidem R. non ven' habuer' diem per Essonium suum hic ad hunc diem postquam sum' Ideo pd' W. Respond' sine &c. vid. Rast. Entr. 316. a. b. — Salop. ff. Record Severans.

The Entry of Essoines in the great Sessions in Chestet, are commonly upon the Writs or Pannels, and sometimes upon a Roll. — Entry of Essoines in Chester.

The Entry upon an Essoine Roll in *Chester*, is thus——

Esson' adject' coram præfat' Justic' ad ist' eand' Session' i. e. xviii April' 1 E. 6. coram Robto' Townsend mil——Ro. 2.

Johannes Savage mil' versus Humfrid' Swinnerton Ar' in plito' terr' per Johan' Cutt, usque pr' diem prox' Session' apud Cist' &c.——— } Ass. — Cestr. ff. Record.

Laurentius Savage Ar' versus Humfrid' Swinnerton Ar' per Johan' Doe in plito' vasti, vel terr' usque pr' diem prox' Session' apud Cistr', coram Justic' Cestr' tenend——— } Ass. — Cestr. ff. Record.

Essoine to be adjourn'd 15 days.

The Entry of an Essoine upon the Plea Roll, and other Proceedings thereupon is thus:

Ebor. ff. Record. Rast. 580 b.

T. H. miles per I. M. Attornatum suum obuit se quarto die versus P. H. Cler' de placito quod ipse simul cum M. permittat ipsum præsentare idoneam personam ad Ecclesiam de C. quæ vacua est et ad suam spectat donat' &c. Et ipse non ven', Et sum' &c. Id' attach' quod sit hic in Octab' St. Hillarii, Et sciendum quod pd' M. habet hic tunc dom. diem per Esson' prout patet Rot. Esson' de Octab' St. Trinitatis istius ejusdem Termin' prim. &c.

Record.

Aliter—Et sciendum quod pd' Episcopus et Prior hic ad hunc diem fecer' se Esson' de malo Veniend' versus præfat. R. de pd' plito' et habuer' inde diem per Esson' suum hic usque ad præfat' terminum, &c. Rast. ibidem.

The like in other Actions, mutat' mutand'

Ebor. ff.

Entry of the Demandants Essoine.

Record.

Essonator H. op. se quarto die versus W. de plito' &c. sed quia pd' H. modo hic ad hunc diem fecit se Esson' de malo veniend' versus pd' W. quam versus pd' S. de pd' plito' et habet inde diem per Esson' suum hic usque, &c. prout pat' Ro. Esson' secundo de Octab. ist' eod' Termini. Ideo dict' est præfat' S. quod sit hic ad præfat' Termin' ad jus suum pd' defendend' si &c. Rast. 581. b.

When Essoine for Demandant ought to be cast.

An Essoine for the Demandant ought to be cast the first day, because he is demandable the first day, 12 H. 4. 24, 25. But by Brian 18. E. 4. 14. either Demandant or Tenant may be Essoined the fourth day. Note this is at Westminster; but not so in Chester, but the Essoine days are either Usque prox' Session'; or if in the Sessions time, then de die in diem.

Essoine to be adjourn'd 15 days.

15. Note at Westminster, when the Tenant Essoins in Real Actions, the Demandant shall Adjourn the Essoine for 15 days at least, Vid. Stat. 16 Car. c. 6. for days in Banco for mean Process.

CAP.

Default before Appearance.

1. Default before Appearance is a non Appearance in Court at the day at the Return of the Writ, by which the Tenant in a Præcipe shall lose his Land, unless he can save, i. e. excuse his default, and to that end upon such default a Grand Cape shall be awarded to take the Land into the King's hands, Vid. Fleta, lib. 6. c. 14. Co. Lit. 259. Writ.

The Entry of a Default and Judgment upon a Grand Cape.

Entry of a default.

En Brief d' entry. A. per Attornum ſuum qd. ſe quarto die verſus B. de placito quatuor marcar' reddit' cum pertin' in C. quæ idem A. clam' verſus eum de quibus idem B. injuſte &c. diſſeiſivit præfat' A. infra &c. Et ipſe non ven' et ad ſecit default' hic ſcilicet in Octab. Sanct' Hillar' poſtquam fum' &c. Et quod tunc præcept' fuit Vic' quod caperet reddit' pd' tum pertinen' in manus Domini Regis et idem &c. Et quod fuit per bon' ſummonitor' præfat' B. quod eſſet hic ad hunc diem ſcilicet in Octab' St. Trinitatis tunc prox' ſequen' oſtenſur' dend' præfat' A. tam de principal' placito quam de default' ad Ideo conſideratum eſt quod prædict' A. recuperet ſeiſinam ſuam verſus præfat' B. de reddit' pd' cum pertinen' pro default' &c. Et idem B. in mia' &c. Et ſuper hoc pd' A. petit br' de inquirend' de dam' &c. Et ei conceditur retornabil' hic &c. Raſt. Entr. 281. a.

Ebor. ff.

Record.

The Entry of a Default after an Eſſoine and Judgment given without a Grand Cape and an Eſſoine for the Demandant.

Entry of a default after an Eſſoine.

Ad quem diem ven' hic pd' L. per Attornatum ſuum pd', Et pd' B. modo ſe fecit Eſſon' verſus pd' L. de pd' placito et habuit inde diem per Eſſon' ſuum &c. uſque in Octab' St. Trinitatis tunc prox' ſequen' &c. Et ad hunc diem Attorn' pd' L. fecit ſe Eſſon' de malo Veniend' verſus pd' B. de placito pd' & habuit inde diem per Eſſon' ſuum uſque ad hunc diem ſcilicet in Octab' St. Michael' tunc prox' ſequen' Et modo ſcilicet hoc die

Salop. ff.

Record.

præfat' B. hic &c. Et modo hic ad hunc diem ven' pd' L. per Attornatum ſuum pd' Et op. ſe quarto die verſus pd' B. de pd' plito' Et ipſe ſolemniter exact' non ven' Et habuit inde diem per Eſſon' ſuum Ideo conſideratum eſt quod pd' L. recuperet verſus pd' B. ſeiſinam ſuam de prædict' tenement' cum pertinen' pro defalt' &c. Et pd' B. in mia' &c. Raſt. 146. b.

Quer. whether this be legal that the Demandant ſhall Recover Seiſin upon default, after an Eſſoine, without a Grand Cape, for its contrary to Br. tit. Gr. Cape, 3. & M. 3 H. 4. 3. p. 17.

Default of the Wife, default of the Husband. Default of one of the Tenants.

2. In Præcipe quod reddat, the default of the Wife, is the default of the Husband, and the Demandant ſhall recover Seiſin of the Lands. 41 E. 3. 24. Præcipe againſt two, one makes default, the Demandant ſhall recover Seiſin of a Moiety. 41 E. 3. f. 2. p. 7.

Lun Demand' fait default & Tenant fait. default. Summons *ad Sequend' ſimul.*

3. In a Præcipe by two, if one of the Demandants make default, and the Tenant makes default, a Summons ad Sequend' ſimul ſhall iſſue againſt the Demandant that made default, and a Grand Cape of the whole Land againſt the Tenant, and if at the Return thereof the Demandant that made default appear, Judgment ſhall be given for both the Demandants for the whole Land; but if he did not appear, then only for the moiety for one Demandant. 4 H. 6. 28. Br. default 46. et 28 H. 6. 3. The next in Order, after default before Appearance, is a Grand Cape, and therefore of that in the next Chapter.

CHAP. VII.

Of a *Grand Cape*

What.

1. GRand Cape or Cape magnum, is a judicial Writ in a Præcipe quod reddat, for Lands, Tenements and Hereditaments, which iſſues where the Tenant makes default at the day in the original Writ, and this Writ is to take the Land into the King's hand; and if the Tenant cometh not

not at the day of the Return, he loseth his Land. Bract. lib. 3. tract. 3.

2. And by this Writ the Land is to be taken into the King's hands, by the view of lawful Men which are called Veiors, with a Summons of the Tenant to answer as well to his default, as to the Action of the Demandant; and in this it differs from the Petit Cape, which is only to answer to the default. 50 E. 3. 16. 38 H. 6. 33. Veiors.

3. At the Return of the Grand Cape, the Tenant may save his default, as to say he was not Summoned, &c. or was in Prison, or disturbed by the rising of Waters, &c. but of this in Saver default. *Saver* default, how and when.

The Grand Cape.

Rex, &c. Vic' C. salutem Cape in manum nostr' per Visu' legalium hominum de Com' tuo tertiam partem un' Mess' cum pertinen' in N. ad quorumcunque manus devener' in balliva tua qu' I. qu' fuit ux. I. in Cur. nostra, &c. apud *Westm.* clam' in dot' versus prædict. T. pro defectu ipsius T. Et diem Capcon' scir. fac. Justic' nostris apud *Westm.* per liter. tu' sigillat' Et sum' per bon. summonitor. prædict. T. quod sit coram Justic. nostris apud *Westm.* in Octab. St. Hillar, inde respondsur. & ostensur. quare non fuit coram Justic. nostris apud *Westm.* in Octab. St. Michael. Archangel. sicut summonit. fuit. Et habeas ibidem noia. per quorum Visum hoc fecer. sum. Et hoc bre. Test. &c. Reg. jud. 2. b. The Writ.

The Demandant must make a Demand in nature of a Count after the default, before he can have a Grand Cape to ascertain the particulars, as Acres, &c. where the Writ is general.

The

The Return of the Sheriff is thus:

Return of the Sherriffe.

Vicecomes Bris. decim' die N. Anno infra ſcript. per Viſum R. H. & T. H. proboc. & legalium hominum de Com. meo Cepi in manus Dom' Regis ſerr. infra ſcript. prout interius mihi præcipitur.

Summon. I. D. I. P. T. M. Vic.

Names of the Veiors to be return'd.

The names of the Veiors and Summonners muſt be Returned, Br. Return. 86.

To be executed 15 days before the Return.

4. The Land ought to be taken into the King's hands 15 days at leaſt before the Return of the Writ. Br. Grand Cape 29. & 36. But in Cheſhire, if it be one, two, or three days, it is ſufficient, if it be in time of Seſſions.

Return of *nul' habet terr'* where.

5. The Sheriff may Return quod null. habet terr. &c. and this is a good Return, Br. Return 7. But upon ſuch Return, the Tenant ſhall loſe his Land upon the default. Fitz. 113. Note that this Return may be made where the Grand Cape is againſt the Vouchee, but not againſt the Tenant. 9 H. 6. 41.

The Sheriff to be anſwerable for the Profits.

6. When the Land is taken into the King's hand, the Sheriff ſhall be anſwerable for the Profits, from the time of the default till Judgment for the Demandant. Stamf. Prerog. 84. Yet by ſome theſe words (cape in manum noſtr') are but words of Form. Kiel. 117.

Judgment not to be given till Proceſs be determined againſt all.

7. Where the Præcipe is againſt ſeveral, and ſome appear, and others make default, and others Eſſoine; Judgment ſhall not be given preſently upon the Return of the Grand Cape or Petit Cape, till all have appeared, or Proceſs be determined againſt them, becauſe perhaps ſome of them may take the intire Tenancy upon them. For this vid. 11 H. 6. f. 42. & 3 H. 6. 52. Br. Gr. Cap. 1. 2 E. 4. 21. b. Br. Gr. Cap. 32. 12 H. 6. 6.

8. If

8. If the Grand Cape be not Returned, there must be an Alias before Judgment, Vid. Keilw. Rep. 54. b. 55. a. Al. Gr. Cape.

The Record following of an Entry of a Grand Cape in Chester, in a Cessavit, when the Courts of the Sessions were held every month, or in the name of County Courts.—— Entry of a Gr. Cape in *Chester*

Placit. ad Com' *Cester'* apud *Cester'* Coram *Thom' Stanley* Mil' Justic. Domini Regis *Cestr'* die martis prox' post festum Epiph. Domini anno regni Regis *Henrici* sexti, post Conquest. Angl. tricesimo secundo. XXXII *H.* 6.

Rogerus Abbas Domus & Ecclesiæ de Cumbmere in propria persona obtulit se versus *Ric. Wallis* de placito un' tofti cum pertin. in Wico malbano quod prædict *Rogerus* in Cur. dom' Regis hic' clam' ut jus suum versus prædict' *Ricardum* per bre' Domini Regis de Cessavit per biennium' pro defectu dci Rici' &c. Et ipse non Ven' Id' prædict' Toft' cum pertinen' Capiatur in manu' Domini Regis &c. Et diem &c. Et predict' *Ricardus* sum' quod sit hic ad prox' Com' scilicet diem martis in prim' Septiman' Quadragesim' prox' futur' &c. ad respondendum præfat' Abbat' tuam de principal' placito prædict' quam de default' prædict' &c. Idem dies dat' est præfat' Abbat' hic &c. Cestr. ff. Record.

In the next place is proper to shew how a default may be sav'd, and therefore the next Chapter is of that called Saver Default.

CAP. VIII.

Saver Default.

1. Saver Default, is to excuse a default, which is properly when a man having made a default in Court, comes afterwards at the Return of the next Process, and alledges a good Cause why he did not appear, as Imprisonment at the same time, or the like. What.

2. In

When to be sav'd.

2. In Real Actions, a default for non appearance must be saved at the Return of the Grand Cape in null Præcipe quod reddats, and at the Grand Distress in other Real Actions where the Process is Summons, Attachment and Distress peremptory.

Causes of saver of default.

3. There are divers Causes may be allowed by Law for saving a default. 1. By Imprisonment. 2. By Inundation of Waters. 3. By Tempest. 4. By breaking of a Bridge. 5. For want of due Summons. 6. The Demandant being essoined and some others, as in Co. Lit. 259. Its no Excuse to alledge that he was sick of great Infirmities. Benlowes Rep. 24. Pl. 96.

Most usual excuse is want of Summons.

4. The most usual is for want of Summons, and this shall be tried by the Tenants waging his Law of non Summons (called his gager de non Summons,) and not per pais, Except it be that the Tenants are a Corporation aggregate, as Mayor and Commonalty, Dean and Chapter, or the like, &c. 33 H. 6. 8. See this point there debated.

Wager of Law of non Summons.

5. If the Summons were not serv'd 15 days before the first day of the Return of the Writ, the Tenant may wage his Law of non Summons, for 15 days before the 4th. day will not serve. 24 E. 3. 46. Br. Ley gager. 57.

6. The Wager of Law in non Summons shall be by the Tenant in person, and not by Attorney. 7 H. 4. 6.

Essoine upon making his Law.

7. Upon the day given to the Tenant to make his Law, he may be Essoined, but if he makes default afterwards, he shall lose his Land, 33 H. 6. f. 8. No Common Essoine lies for the Tenant upon a Grand or Petit Cape. 19 H. 6. 57.

Demandant essoine excuse le default of the Tenant.

8. If the Demandant be Essoined at the Return of the Grand Cape, the Tenant shall never be put to save his default, but a distringas ad respondendum shall issue. 37 H. 6. 29. a.

How the Demandant may release the default.

9. If the Demandant will stand upon the default, and hold himself to that, if the default be sav'd, the Writ shall abate,

abate, but the Demandant may if he pleale, releale the Default, and then the Tenant ſhall only anſwer to the Action, and if it be after Iſſue upon a Petit Cape, if the Demandant ſtand upon the Default, the Iſſue is wav'd, and if the Tenant ſave the Default, Quær, Whether the whole Action or Writ ſhall abate, or only the Tenant ſhall plead de Novo, 13 E. 4. 1. 11 H. 7. 1. 27 H. 8. 14. 2. 10 H. 7. 21. 3 E. 4. 21. But at the Day given to the Tenant to make his Lap, the Demandant cannot releaſe the Default without the Tenant's Conſent.

10. Before the Default ſav'd, after a Grand Cape, no Plea ſhall be admitted, which proves the Writ only abatable, but a Plea which proves the Writ abated in facto, as death of the Demandant puis le darrein Continuance ſhall be allow'd, 21 E. 4. 80. a. No Plea allowable before the Default ſav'd.

The Entry of a *Saver Default* by waging Law of Nonſummons, is thus———

A. alias pet' verſus *B.* duo Meſſuag', &c. ita quod tunc præcept' fuit quod ſum' prædict' *B.* per bon' ſum' quod eſſet hic in Octab. &c. ad reſpondend' præfat' *A.* de prædict' placito Ad quem diem prædict' *B.* fecit Defalt' ita qd' præcept' fuit Vic', qd' caperet Meſſuag'. &c. in manum Domini Regis, &c. Et qd' ſum' *B.* per bon' ſum' quod eſſet hic videlicet, &c. ad reſpondend' præfat' *A.* tam de principal' placit' quam de præd' Defalt' Ad quem diem, &c. Et præd' *A.* præciſe ſe capit ad prædict' Defalt' quam prædict' *B.* fecit hic ad præfat' Octab. &c. Et prædict. *B.* dixit quod ipſe nunquam ſum' fuit ſecundum legem terr' eſſend' hic ad præfat' Octab. ad reſpond' præfat' *A.* de prædict' placito Et hoc paratus fuit defendere contra ipſum & Sectam ſuam prout Cur' Regis hic cons' Per quod adtunc conſideratum fuit quod vad' ei inde legem ſuam de xii. manu, &c. Et inven' pleg' de lege ſua inde faciend' & habuit inde diem hic uſq; &c. Ad quem diem tam præd' *A.* quam præd' *B.* hic comparentibus idem *B.* inde præfecit inde legem ſuam prædict' prout eam ſuperius vadiavit per quod conſideratum eſt quod prædict' *A.* nihil caperet per breve ſuum præd' ſed ſit in miſ' &c. pro falſo clamore ſuo & quod prædict' *B.* eat inde ſine die, &c. *Vid. Raſt. Entr.* 417. *Journey's* Accounts. Record. Saver Default.

11. Note,

Duodecima manu.

11. Note, In waging Law of Nonsummons, at the day of making his Law he must have Eleven Persons with himself, to swear they believe the Tenant sweareth true, which is called Duodecima manu; and this is by force of the Stat. of Magna Charta c. 28. whereby it is Enacted, That none shall be admitted to wage his Law without credible Witnesses. Vid. 37 *H.* 6. 8. Et Co. 2. Inst. 45. In Practice there may be fewer than Eleven, as the Court thinks fit.

12. Having now done with such things as are Incidents to Real Actions before Appearance, I proceed next to those that are Incidents after Appearance concerning the Writ; and first of Summons and Severans.

CAP. IX.

Summons and Severans.

Where it is.

1. Summons and Severans is where there are several Demandants or Plaintiffs that are forc'd to join in one Action, and one or more of them refuse to prosecute, and will not appear, then a Summons shall be awarded against them that do not appear, that they appear at a certain Day to prosecute together with the other Demandants or Plaintiffs. At the Return of which Summons, if they appear not, Judgment shall be given, that the other Demandants shall sue alone, and they that appear not shall be severed. 10 Ass. pl. 12.

In what Actions.

2. And the Summons and Severans lies generally in most Real Actions, and Actions that favour of the Reality, as in Dettme of Charters, Warrantia Cartæ, &c. Co. 1 Inst. 286. c. 139. 2 *H.* 4. 2. 11 *H.* 6. 23. but in few Personal Actions.

The end of Summons and Severans.

3. And the End and Intent of this Summons and Severans is, That the Nonsuit of one Demandant, should not be the Non-

Nonsuite of the other in Real Actions, nay the Death of him that is severed, should abate the Writ after Severans. Where death shall abate the Writ after Severans, and where not. Vid. Good Learning, Co. lib. 10. Read and *Redman's* Case 134.

4. Severans of the Demandant is twofold: 1 By Summons ad sequend' simul, where one of the Demandants never appear'd. 2. By leave of the Court, without any Process; and this after Appearance by manifesting him that does not appear, and entring Judgment that the other sequatur solus. Co. 1. Inst. 139. b. How many sorts.

The Entry of *Summons* and *Severans*, where the *Summons* was in *Terra petita*.

P. al's in Cur' Domini Regis hic petiit vers. *J. L.* Castrum & Maner', &c. cum pertin' in *R.* ut jus ipsius *P.* & *B.* per breve Domini Regis de forma donationis in descendere Et præd' B. simul petens, &c. adtunc non ven' ita quod tunc præcept' fuit Vic' quod sum' eum per bon' sum' qd' esset hic a die, &c. ad sequend' simul, &c. Ad quem diem Vic' modo mand' hic qd' præd' *B.* nihil habuit in Balliva sua ubi potuit summonir' per qd' præcept' fuit Vic' qd' sum' eum in præd' Castro & Maner' quod esset hic in hunc diem scilicet, &c. ad sequend' simul, &c. si, &c. & modo hic ad hunc diem ven' præd' *P.* per Attorn' suum & præd' *B.* quarto die pl'iti solempniter exact' non ven' & fuit simul petens, &c. Et Vic' modo mand' quod sum', &c. Ideo consideratum est qd' præd' *P.* sequatur solus sine ipso *B.* versus præfat' *A.* quoad medietatem præd' Castr' & Maner', &c. cum pertinen' Et super hoc ead' *A.* pet' versus pd' *J.* medietatem eorundem Castr' & Maner', &c. cum pertin', &c. *Rast. Entr.* 375. *Stafford* ff. Record. Summons and Severans.

Entry of *Summons* and *Severans* without Proceſs.

Postea continuat' processu inter partes præd' de præd' placito per Jurat' poit' inde respect' inter eas hic usq; &c. anno &c. & modo hic ad hunc diem ven' tam præd' *C.* quam pd' *A.* per Attorn' suum præd' Et pd' *G.* & *B.*, quarto die pl'iti solempniter exact' non ven' Ideo ipsi per considerationem Cur' Regis hic separentur & præd' *C.* solus admittatur sine præfat' *G.* & *B.* ad sequend' versus præd' *A.* quoad medietatem mes' &c. cum pertin' & jurat' inde quoad medietatem pd' inter *Stafford* ff. Record.

inter præd' C. & præd' *A.* de placito ponitur in respect' hic usq; &c. *Rast. Entr.* 593.

Summons and Severans lies in these Actions

1. *Libertate probanda*, F. N. B. 189.
2. *Quare Impedit*, Co. lib. 10. 134.
3. *Quo Jure*, F. N. B. 309.
4. *In rationalibus divisis*, F. N. B. 311.
5. *Si non omnes*, F. N. B. 36.
6. *Warrantia Cartæ*, Co. 1. Inst. 286.
7. *Formedons*, Vid. Rast. Entr.
8. *Assise*, 44 E. 3. 16. 23. Ass. p. 9.
9. *Waste*, 42 E. 3. 20.
10. *Bre' de Gard*, 38 E. 3. 9.
11. Attaint in Real Actions, See in Writs of Error, 29 *Ass.* 35.

Lies not in

1. *Nativo habendo*, F. N. B. 189.
2. *Quid Juris clamat*, Co. lib. 10. 135.

But this is a Judicial Writ.

CAP. X.

Non-tenure.

1. After the Writ is brought, and Appearance given by the Tenant, there are several Pleas which may be offered by the Tenant in Abatement of the Writ, and amongst others Non-tenure.

What.

2. Non-tenure is a Plea in Abatement of the Writ, whereby the Tenant alledges, that he is not Tenant of the Freehold of the Land or Rent demanded, or of some parcel of it at the time of the Writ brought, or at any time since, 8 E. 3. 410. Thelw. Digest. of Writs, f. 238. Sect. 9. Rast. Entr. 440.

The kinds.

3. There is Non-tenure General, and Non-tenure Special: Non-tenure General is before defin'd; Non-tenure Special is where the Tenant shews what Interest and Estate he hath in

in the Land demanded, as that he is Tenant for years, in Dower, by the Curtesie, Merchant, Elegit, or the like, 1 E. 3. 1. 2 E. 3. 42. 7 H. 6. 37, 38. Thelwall Digest. of Writs, 240, 241. b. And therefore Cowel's Description of General and Special Non-tenure (Exclusive) is a Mistake; and the same Description in Blunt's Homo-Lexicon following him.

4. If the Tenant do not hold any part of the Land, i. e. be not Tenant of the Freehold, the Writ shall abate, because as Bracton, *Amittere non potest quod non habet, & ita cadit breve*, Bract. lib. 5. c. 27. § 431. Non-tenure abates the Writ.

5. So at Common Law by Non-tenure of parcel of an intire thing, as a Manor, the whole Writ shall abate. But now by the Statute of 25 E. 3. c. 16. by Non-tenure of Parcel, no Writ shall abate, but only for the quantity of the Non-tenure which is alledg'd and prov'd; yet it is held, 21 E. 4. 29. That in a Cessavit, Non-tenure of Parcel shall abate the whole Writ, though after the Statute, because the Tenant cannot temper the Arrears for the whole demanded. Where Non-tenure of Parcel shall abate the whole at Common Law. Alter'd by Stat. of 25 E. 3. c. 16.

6. Non-tenure General may be pleaded without shewing who is Tenant. 6 E. 3. 249. Thelw. Digest. of Writs 237. But Special Non-tenure must shew who is Tenant, Thelw. Digest of Writs 240. Sect. 41. 8 H. 6. 15. Where it must be shewed who is Tenant.

7. In Non-tenure of Parcel, the Tenant ought to shew who is Tenant, or else to answer to the Residue of the Land demanded, or otherwise the Writ should not abate at Common Law before the Statute, wherein the Equity of the Common Law is observable, that would not suffer a Writ good in part to be wholly destroyed, except the Tenant shew how the Demandant may have a better Writ, 36 H. 6. 7. 8 E. 4. 6. 10 E. 3. 497. Thelw. Digest. of Writs 242. Sect. 8, 10. Vid. Modern Rep. 181. *Fowle* and *Doble*'s Case. Who is Tenant is to be shewed in Non-tenure of Parcel.

8. But in Br. 868. in a Præcipe quod reddat of three Manors, there was Non-tenure pleaded of one, and the Writ not abated for the other two, and this before the Statute of 25 E. 3.

Non-

Non-tenure is not pleadable in theſe Writs——

1. *Nuper obiit Non-tenure* of Parcel, no Plea, Reg. 226. F. N. B. 491. in meo. 7 H. 6. 8.
2. *Per quæ ſervitia*, Thel. Dig. Wr. 238. Sect. 12.
3. *Waſte*, 46 E. 3. 25. 48 E. 3. 19.
4. *Deceit*, Thelw. 240. Sect. 33.
5. *Darrein Preſentment*, ibid.
6. *In Poſt Diſſeiſin*, F. N. B. 373.
7. *Recti de rationabile parte*, F.N.B. in meo. 22.
8. In *Scire fac. Non-tenure* of Parcel ſhall not abate the Writ, Thelw. Sect. 7.

Non-tenure of a Rent how.

9. In pleading of Non-tenure of a Rent, it muſt be ſaid, that he is not Pernor of the Profits, nor Tenant of the Land, out of which, &c. at the time of the Writ brought, &c. 5 E. 4. 22. Thelw. f. 241. Sect. 44. Raſt. Entr. 440.

Non-tenure of the Lands put in View, and where *de terris petitis*.

10. After View the pleading of Non-tenure is of the Lands put in View, and needs not ſay of the Lands demanded; but before View it ſhall be of the Lands in demand, de Tenementis petitis, 20 E. 3. 373. Contra 18 E. 3. Br. 357. Thelw. 239. Sect. 22, 23.

CHAP

CAP. XI.

Joyntenancy.

1. IN Real Actions may be pleaded likewise in Abatement of the Writ Joyntenancy, Sole-tenancy, or Several Tenancy.

2. Joyntenancy in the part of the Defendant or Tenant, is when the Tenant and some other Person do hold the Land joyntly, i. e. are Joyntenants of the Freehold, and the Writ is brought only against one, whereas it ought to be against all the Tenants of the Freehold; and if it be not, the Tenant may plead and demand Judgment of the Writ, because another is Tenant of the Freehold with him who is alive, not named. Vid. Rast. Entr. 66. Assise pl. 7 & 8. Rast. Entr. Formedon 362. b. pl. 4.

What.

3. At Common Law if the Tenant had pleaded Joyntenancy by Deed or Fine, the Writ must abate of Course; for the Demandant could not aver Soletenancy against the Deed pleaded, or the Fine, but he might confess and avoid the Joyntenancy as to plead a Release or other Conveyance by one Joyntenant to the other, 14 H. 6. 8, & 25. Fitz. Tit. Jonynte-nancy. 18. Leon. 2 p. 161. Fitz. Tit. Joynt. 11, 14. 24 E. 3. 51. Br. Joynt. 22. 20 H. 7. f. 66.

Where Joynte-nancy by Deed or Fine shall abate the Writ without Answer.

4. But now by the Statute of Conjunctim Feoffatis, 34 E. 1. in case of a Deed the Law is altered, and the Demandant or Plaintiff shall not be delayed by abating of his Writ, but may aver Soletenancy. Vid. le Statute. But as to Fine, the Law remains as it was at Common Law, Dyer 291. Leon. 2 p. 161. 24 E. 3. 51. Br. Joynt. 22. 20 H. 7. f. 66.

Stat. de Conjunctim Feoffatis, 34 E. 1.

5. Note, Though Joyntenancy be pleaded ex Dono or Feoffamento of such an one, yet if it be not by Deed, the Averment may be had against the Joyntenancy; and therefore when it is by Deed, there is a Profert hic in Cur' in the Plea, as in the first Plea beforemention'd in Rast. Entr. 66. b. and where it is pleaded without Deed, there is no Profert, &c. as in the latter Pleading in Rast. Entr. Formed. 362. b. pl. 4. Br. Joynt. 26.

Where there must be a *Profert hic in Cur'*

6. In

Where it must be shew'd of whose Gift.

6. In pleading Joyntenancy on the part of the Tenant, it must be shew'd of whose Gift, and of what Estate, Fitz. Tit. Joyntenancy, 31. 3, & 29.

Difference in pleading Non-tenure and Joyntenancy.

7. Note, A difference between pleading Non-tenure and Joyntenancy: In Non-tenure he must plead, That he was not Tenant at the time of the Writ purchased, or at any time after; but in Joyntenancy he may plead Joyntenancy only at the time of the Writ purchased, 37 H. 6. 16. Fitz. Tit. Joynt. 24. Br. 24. The Reason of this Difference is worth Inquiry; for Billing says in the Case, that there is great Difference as to this Point between Non-tenure and Joyntenancy, but does not shew wherefore or upon what Ground.

Why Joyntenancy abates the Writ.

Voucher.

8. And the Reason why Joyntenancy shall abate the Writ, is, because the Tenant would lose the Benefit of his voucher, if the other Joyntenant be not joyn'd in the Writ; for one Joyntenant cannot vouch without the other, Br. Joynt. 6. 8. & 23.

Joyntenancy pleaded by one Tenant after another after a former Writ abated.

9. And therefore if the Tenant plead Joyntenancy with K. and the Demandant bring a new Writ by Journeys Accounts against the Tenant and K. the Tenant and K. may plead Joyntenancy with C. for the Benefit of K. who was not privy to the Writ at first, Br. ibid. 39 E. 36.

CAP.

CAP. XII.

Of Sole-tenancy.

1. Sole-tenancy is where one of more are made Tenants to the Writ, and one of them only is Tenant of the Free-hold of the whole. What.

2. But when Soletenancy is to be pleaded, and how and when it shall abate the Writ or not, is a matter well to be Considered, as to practical Proceedings in Real Actions in this Case. And first Rules of pleading Soletenancy.

1. In Pleading Barre of Soletenancy, the Tenant must plead over or Vouch, (if it be true the Demandant hath Counted) and not conclude to the Writ, otherwise the Writ shall not abate. And in such Case the Plea over in Bar, or Voucher are not to be answered, but the Demandant must maintain his Writ. Quere le reason de ceo. 10. E. 4. 8. 28. Ass. Pl. 25. 41 E. 3. 20. 44 E. 3. 33. 1. Rule. Vouch on pleader over.

2. If one of the Tenants only take the intire Tenancy upon him, and the other make default, say nothing, or plead non tenure, the Demandant may answer to the Bar without maintaining his Writ, but if the other take the intire Tenancy likewise, the Demandant must maintain his Writ. 10 E. 4. 8. 41 E. 3. 16. Where the Demandant shall not be forc'd to maintain his Writ.

3. Where one of the Tenants pleads non tenure, and the other takes the intire Tenancy upon him and pleads over, the Writ shall only abate against him that pleaded Non tenure, 22 E. 4. 4. Rast. Entr. 276. b.

4. If one of the Tenants disclaim, and the other take the intire Tenancy upon him, and plead over or Vouch as he ought, the Demandant may answer to the Plea in Bar, and not maintain his Writ. Rast. Entr. 276. Entr. bris & 225. b. Disclaimer.

Præcipe against four, and makes default after appearance, how Process is to go.

5. If a Præcipe be brought against four, and the one disclaims, and two take [illegible] upon them, and the fourth makes default after appearance, the Petit Cape shall be awarded against him and Return'd, and nothing shall be Entred of [illegible] but only their Appearance till the Petit Cape be Return'd, because he who made default may perhaps save his default, and take the intire Tenancy upon him [illegible] not reject him of his Tenancy, [illegible] save his default, yet the Demandant shall not recover Seisin of a fourth part, till the issue of the Soletenancy be tried between him and the other Tenants. 46 E. 3. 35. 2 E. 4. 29. 3 H. 6. 53.

When Sole tenancy is to be pleaded without pleading over in bar.

6. Note, that if before Appearance, one of the Tenants in a Præcipe make default, and a Grand Cape is awarded, and the other at the Return of the Grand Cape take the intire Tenancy upon him, he is to plead Soletenancy, without pleading over or concluding in the Tenet, but pray that the Demandant may Count against him; Note the difference, when the Plea is after the Demandant hath Counted, and when it is before, for when it is after, the Tenant must plead over in bar, or Grouch as before. Rast. Entr. 271. a. 364, 365.

For the Form of Pleading Sole, and several Tenancy. Vie. postea several Tenancy.

CAP. XIII.

Several Tenancy.

What, and when.

1. Several Tenancy is, when the Tenants hold severally several parts of the Land demanded, and the Writ is brought jointly against them all, the Tenants may plead severally, and shew how they hold Sole such a part of the Tenements demanded, absque hoc quod prædict' B. aliquid habuit

habuit in eodem die impetraco'nis bris' vel unquam postea &c. Rast. Entr. 365. a. This is much of the nature of Sole-tenancy, and in pleading several Tenancy, the Tenant must plead over in Bar or Vouch, as in Soletenancy, and not conclude to the Writ, and the Demandant must maintain his Writ. 41 E. 3. 20. 42 E. 3. 8. 44 E. 3. 33. 19 H. 6. 14. though the other say nothing; and herein it differs from Soletenancy, where if one say nothing, the Demandant may answer to the barr, and not maintain his Writ, as is before said.

Must plead over in barr or Vouch.

A

2. Several Tenancy shall abate the whole Writ. 27 H. 8. 30.

Several Tenancy abate the whole Writ.

3. Several Tenancy may be pleaded by the two Tenants after waging of Law of Non Summons, and though they joyn in waging their Law, they shall not be stop'd to plead severally, several Tenancy; but if two or more take the intire Tenancy upon them, and wage their Law when there are other Tenants nam'd in the Writ, they shall be stop'd to plead several Tenancy afterwards. 42 E. 3. 16.

When several Tenancy is to be pleaded after waging of Law.

4. Several Tenancy is not pleadable in Nup. obiit. 7 H. 6. 8. or in Assise, or any other Action where no Land in certain is demanded. Br. Sev. Ten. 18. 2. Leon. p. 8. But this is to be understood that several Tenancy shall not be pleaded (in an Assise, or any other Action where no certain Land is demanded) to the Writ, for after a Plaint in an Assise, several Tenancy may be pleaded, as in Dyer 244. Assise against four, three plead several Tenancy, and the fourth pleads intire Tenancy of the whole, the Demandant shall chuse his Tenant at his peril.

In what Actions it may be pleaded.

See Rast. Entr. 364, 365. The pleading exactly Soletenancy and several Tenancy, according to the former Rules.

CAP. XIV.

Imparlance.

What. 1. After the Demandant hath Counted, the Tenant may pray a day to be given him by the Court to answer, which is called an Imparlance, in Latin, Interlocutio vel interloquela, and is Entred thus——Et prædict A. B. per T. L. Attornatum suum ven' et defend' jus su' quando &c. Et pet' licentiam inde interloquend' usque, &c. Et. het' &c. Kitchin f. 200.

The Kind. 2. Imparlance is two-fold, General and Special. General Imparlance is Entred as before, special Imparlance is when the party prays it with a saving of all Advantages, and then is added to the Entry Salvis omnibus advantagiis tam ad Jurisdic' Cur' quam bre' et narration'. Kitchin, ibidem.

No Plea to the Writ after imparlance. 3. Note that after a general Imparlance, no Plea to the Writ is to be received; but Non-tenure, Joint-tenancy, several Tenancy, may be pleaded in Abatement after imparlance. Vid. Keilw. Rep. 93. b. Palmers Rep. 308.

Demandant or Tenant may imparle, days of grace. 4. Either Demandant or Tenant may Imparle, and the Court may give what day they think fit, and are not bound to the Common days; for days of imparlance, are but days of grace, and so of days given for Demurrer or the like. Quia Cur' nondu' advisatur, &c. 8 E. 4. 4. Br. jours. 52.

Imparlance in *Cheshire* till the next Sessions. 5. In the Court before the Justices of Chester, upon a special Imparlance in real Actions, day is commonly given, and in general Practice till the first day of the next Sessions, if there has been no default before.

And thus much of such Proceedings as concern such dilatories, and pleadings as have reference to the Writ and Declaration, not going or referring to the matter of the Action

Action. The next is of such Pleadings as are Dilatory, (after the Writ is awarded to be good) as the Tenants before pleading to the Action, as View, Essoin, Counterplea of Voucher, Counterplea of Warranty and Aid prayer.

CAP. XV.

Of View.

1. IN most Real Actions, after the Demandant hath Counted, the Tenant may demand the View of the Land demanded, or if it be a Rent or other thing, View of the Land out of which it is, issues. Nomo-lexicon Tit. View. And the reason and ground of this Institution in the Law was, Quod certa res in judic' possit deduci.

What. a tenant may have a View vn termes dun before Count L.K.J. Willes Rep. 344 Davis v Lee.

2. But because the Tenant commonly demands the View merely to delay the Demandant, and not for want of any certain knowledge of the thing demanded, therefore the Stat. of W. 2. c. 48. 13 E. 1. was made to prevent View where it is not necessary, as in the particular Cases enumerated in the Statute expounded in Co. 2. Inst.

In what Cases not grantable per Stat. W. 2. c. 48.

3. And therefore, where any demands the View in such Cases named in the Statute, the Demandant may Counterplead the View, i. e. alledge matter in Pleading, which outs him of View, as where he that loseth Land by default brings a Quod ei deforceat for the Recovery of it, the Tenant shall not have View, because he is well enough ascertained of the Land by the former Record; so where View was had in a former Writ, and that Writ was abated after View for some mistake that appeared upon the View, as Nontenure, misnaming of the Town, so in Dower, when it is brought against the same Tenant that purchased the Land of the Husband; so if the Husband by's fein'd, it is a good Counterplea of View in Dower, 34 H. 6. 3. 21 E. 4. 22. and some other Cases mentioned in the Stat. Vid. Co. 2 Inst. 480.

Counter-plea of View, where.

4. View

Where in Dower.

4. View in Dower, is not to be understood of a Writ of Dower, unde nihil habet, but other Writs of Dower, for no View lay at Common Law in Dower, unde nihil habet. But Quær. whether not by the Stat. of 12 E. 2. de visu terræ, not Printed in Poulton. By that Statute, View is not to be granted in these several Writs, 1. Writ of Ward. 2. Of Customs and Services. 3. A Writ of Right of Advowson, except there be two Churches of one name in one Town. But to be all in a Writ de dote assignanda, and in Nuper obiit. Vid. Rast. abridg. Stat. View 519. where that Stat. de visu terr' is mentioned, but not set forth at large, nor in any other Printed Statute Book that I know of.

Where ousted at Common Law.

But in 45 E. 3. f. 17. its said that View was ousted in four Writs at the Common Law, 1. Dower unde nihil habet. 2. Intrusion. 3. Breve d' entry en le quibus. 4. Nuper obiit.

Where granted by some Statutes.

6. Whence I collect, that some Statute has granted View in these Writs now, for there are other Writs that the Common Law did not allow View in, as well as these, as in Writs where there was privity of Blood between the Tenant and Demandant, as in a Writ of Right de rationabili parte, where the Ancestor died seis'd, and for the same reason View did not lie in a Nuper obiit till the 12 E. 2. which Statute perhaps gave View in all the other Cases, as Intrusion, Brief d' Entry, &c. Vid. F. N. B. 22. & 493.

Not grantable in Intrusion.

7. But by 2 H. 4. 5. View lies not in Intrusion, nor in the Writ of Entry in le Quibus, ibidem, 8 H. 6. 27. Contr' 2 E. 3. 44. b.

View in Dower *unde nihil habet.*

8. Note, that in the Writ of Dower unde nihil habet, View by Rastal's Entries lies, for there is the Writ of View in hæc verba. Though it seems questionable by some, whether View lies in a Writ of Dower unde nihil habet or not. Dyer 179. 14. H. 6. 6.

Kinds of *View.*

9. There are two sorts of View in Real Actions 1. View by the Party 2. View by the Jurors, as in Assise of novel disseisin, 3. Wast. 4. Assise of Nusance the Party shall not have View because the Jurors shall have View. 9 H. 6. 41. b. 8 H. 6. 27. 19 H. 6. 43. 50 E. 3. 11.

10. View shall not be granted after a Say given per Prec partum 46 E. 3. 14. nor after pleading to the Action, 3 H. 6. 55. because he takes Conizans of the Land. 19 E. 3 Cui

Not grantable after pleading.

11. View may be granted as well after general Imparlance as before, by the general Practice, though many Books are against it. Dyer 210. 20 H. 6. 18. 35 H. 6. 21. 9 E. 4. 31. But it is safest to demand the View before Imparlance.

Grantable after Imparlance.

12. Regularly, View shall not be granted, of a mans own wrong &c. sous; as in Writs of Entry sur disseisin against the Disseisee himself, an Assise of Nusance, Admeasurement of Pasture, Writs of Entry in le Quibus against the Tenant himself or the like, but yet this is to be explained, because it seems to contradict what is said before, as to Assise of Nulance, Writ of Entry in le Quibus. Institutions 1. As to the Assise of Nulance, the View shall be of the place to which the Nusance is done, because it is another thing than is in demand, Roll. Abridg. 727. 8 H. 6. 18. b. 41 E. 3. 23. so in a Writ of Entry sur disseisin of a Rent, View shall be of the Land out of which &c. because it is another thing than is demanded. 8 H. 6. 27. 7 H. 6. 44. so in the Quibus of a Rent. For the Writ of Entry in le Quibus and Institution. Quer. whether View be not granted by Statute as is before said; But in the Case before of a Rent, if it appear to the Court that the Tenant to the Writ is Tenant to the Land out of which &c. View shall not be granted, 34 H. 6. 10.

Not grantable in Actions of a man's own tort.

View of another thing than is demanded.

13. After View, the Tenant may plead in abatement to the Writ such matter as appears by the View; but I conceive not such matter as is apparent in the Writ, for by that means a Plea in abatement may be obtain'd after an Imparlance, which is contrary to the former Rule, and to the Demandant delay'd, where there is no necessity, for the Tenant might have pleaded such matter before the View had, 40 E. 3. 35. Br. View 13. Quer. for by 42 E. 3. 23. b. & 7 H. 6. 34. it seems he shall have a Plea in abatement after View for false Latin, and 11 H. 4. 72. Br. View 41. it is said by Hill that the Tenant may plead matter apparent in the Writ after View, but I conceive this is not Law, neither the one nor the other, Except the View was had before Imparlance, or after a Special Imparlance.

Plea in abatement after View.

14. Where

Writ of View.

14. When View is demanded and granted, there ought to go out a Writ called a Writ of View, and this is to be prosecuted and sued forth by the Demandant himself, for his own Expedition, because he is to shew the Lands to the Sheriff, that he may shew them to the Party; and the Sheriff ought to give notice to the Tenant, and the Veiers or Viewers, i. e. to the four Knights in a Writ of Right, of the time of the View taken. 32 H. 6. 27. Fitz. View. 156.

15. The Form of demanding View, and of a Writ of View in Dower, which is in nature of a Writ of Right is thus——

Record. Et prædict' *R.* per *W.* Attornatum suum ven' & pet' Visum de tenem' prædict' cum pertinen' unde &c. habeat &c. dies dat' est partibus prædict' hic usque, &c. Et interim, &c.

The Writ of View.

The Writ. Rex &c. Præcipimus tibi quod sine dilacone' habere fac' W. visu' de un' Mess' &c. cum pertinen' in B. unde A. qu' fuit ux. S. in Cur. nostr' coram Justic' nostris &c. Clam' tertiam partem versus præfat' W. ut dotem suam ex dotac'one prædict' S. quondam viri sui unde nihil habet, Et dic' quatuor Militibus, ex ill' qui Visui ill' interfuerint quod sint coram &c. ad testificand' visu' ill' Et heas' ibi nom' Militum Et hoc bre' Test' &c. &c. Rast. Entr. 239. b.

The like Writ in a Formedon, only saying thus——

Return of the Writ of View. Cum pertinen' in B. qu' prædict' S. in Cur' nostr' coram &c. Clam' ut jus ipsius S. versus præfat' A. per bre' nostr' de forma donaconis' in descendere. Rast. Entr. 376.

16. The Sheriff may Return either that the Tenant nor any for him came to take the View; or that none came on the part of the Demandant to shew him the Land. In the first Case, the Tenant loses the benefit of View, in the other there is to go out un al'.

Return

Return of the Writ of View is thus——

Virtute istius bris' Justic' infrascript' Certifico quod habere feci W. in eod' bri' nominat' Visu' de un' Mes', &c. Cum pertinen' in B. qu' prædict' A. in Cur' Domini Regis coram Justic' &c. clam' ut jus & hæreditat' suam versus prædict W. per bre' Domini Regis in forma donacois' in descendere, Et dixi quatuor Militibus qu' Visui ill' interfuerint quod sint coram &c. ad diem in ill' bri' specificat' ad testificand' Visu' ill' prout in eod' bri' mihi præcipitur.

R. B. Vic.

A

Or thus——

Nullus ex parte prædict' A. ven' ad ostendend' mihi Visu' de Mes' &c. infrascript' Ideo ad Exactus' hujus bris' per me nihil actum est ad præsens.

R. B. Vic.

17. Upon the Return of the Writ of View which is the next Sessions ordinarily after the awarding of it before the Justices of Chester, the Tenant may pray a Common Essoine, which before the said Justices, is but de die in diem, but in the Common Pleas at Westminster, in all Writs, Except Writs of Dower, nine Essoins days are given upon every Essoine, but in a Writ of Dower there is given but five. The View may be returnable in the Sessions week, any day: But then the Sheriff may delay it by his Return. Essoine upon the Return of the Writ of View.

18. The manner of Counterpleading the View in Dower, because the Husband died seis'd. Vid. Blast. Entr. 239. b. But the President there for the Tenants Replication does not agree with the Book in 34 H. 6. f. 26. Per totam Cur' i. e. He ought to say that the Husband was not Seis'd of any Lands in the same Vill', and not (as it is in the Precedent) that the Husband died not Seis'd of the Lands demanded, for by such Pleading, he takes upon him Conusance of the Land, and then the View ought not to be granted. Manner of Counterpleading View in Dower.

19. When View is Return'd by the Sheriff, the Demandant must Count de novo.

CAP. XVI.

Essoine.

Essoines after appearance.

1. AS the Tenant may be Essoined upon the Return of Summons before Appearance, so he may be Essoined upon the Return of Judicial Process after Appearance, as upon Return of the Writ of View, the Tenant may be Essoined. 12 H. 4. 14. And so upon Return of a Summons ad auxiliand', the Praiee in aid may be Essoined, and of a Summons ad Warrantizand', the Vouchee may be Essoined, and idem dies given to the Tenant, Demandant, and Vouchee, and upon the Vouchee's appearing, the Tenant may be Essoined again: Against the Book of 3 H. 7. 23. Hob. Rep. 46. Earl of Clanrickards Case.

Tenant may Essoine when Vouchee appears.

2. And the Reason why the Tenant may be Essoined upon the appearance of the Vouchee, is because he may have several Pleas to Plead against the Vouchee, as that he is not the same Person, &c. 5 E. 3. Ess. 54. Hob. Rep. 46. 29 E. 3. 48. 45 E. 3. 24. b. The Vouchee and Tenant may have either of them one Essoine, before they Enter into the Warranty.

Essoine upon *Venire* and other Processes return'd.

3. So upon the Return of the first Jury Process (as the Venire fac') the Tenant or Defendant may be Essoined both in Real, and Personal Actions. Co. 2. Inst. 126.

But because something more largely hath been spoken before of the nature of Essoines in general, this shall suffice for Essoines after Appearance. The next thing in Method to Treat of is Voucher, after the Tenant hath appeared, and hath had the View and one Essoine after.

CAP.

CAP. XVII.

Voucher.

1. VOucher is a Term in the Law, and is when the Tenant calls another into Court to defend the Land, or otherwise to have Land of him, of the value of the Land lost by reason of his Warranty; and he that Vouches, is called the Voucher, and he that is Vouched the Vouchee, (Vocatus) Co. Lit. 101. What

2. And the manner of Vouching in the Entry and Pleading is thus—— Manner of Vouching.

Et prædict' S. in propria persona sua (vel per I. B. Attornatum suum) ven' & defend' jus suum quando, &c. Et voc'. inde ad Warrantizand' E. D. &c. Record.

And if the Vouchee be ready in Court, to Enter into the Warranty, then the Entry further is thus——Et Voc' inde ad Warrantizand' E. D. qui præsens hic in Cur' in propria persona sua Et gratis Tenement' prædict' cum pertinen' ei Warrántizat, &c. But if the Vouchee be not ready in Court, then must go out Proces against the Vouchee, which is called a Summons ad Warrántizand' and then the Entry is thus——Et Voc' inde ad Warrantizand' E. D. sum' in Com' prædict' habeat eum hic a die—Per auxiliu' Cur', &c. Idem dies dat' partibus est prædict' hic, &c.

3. If upon the Summons ad Warrántizand' the Sheriff Return the Vouchee Summon'd, and he makes default, a Cap' ad Valencia' shall issue forth for the Tenant, but if the Sheriff Return Nihil, upon the Summons, an al' and plur' shall issue, and then a Sequatur sub suo pericul', and then if the Vouchee make default, Judgment shall be given for the Demandant, but no Judgment for the Tenant to Recover in value, because it appears the Vouchee hath not Assets. Co. Lit. 393. a. & 101. b. Rast. Entr. 687. & 240. a. So if Summons be Return'd, and default be, Default of the Vouchee. *Cap' ad Valencia'.*

Sequatur ſub ſuo periculo.

made, and a Cap' ad Valentiam iſſue, and Nihil be Return'd, an al' & plur' Cap' ſhall iſſue, with a Sequatur ſub ſuo periculo upon the plur'. Raſt. Entr. 377.

Bre' de Summons al Cheſhire.

4. If one be Vouched in Lancaſhire or Cheſhire, and pray Summons thither, the Writ of Summons may iſſue thither from Weſtminſter. 26 E. 3. 59.

The Summons ad Warrantizand' runs thus——

The Writ of Summons *ad Warrantizandum.*

Rex Vic' C. Salutem Præcipimus tibi quod ſum' per bon' ſum' M. S. quod ſit Coram Juſtic' &c. ad Warrantizand' W. decem acr' terr' (according to the Lands demanded) cum pertinen' in L. qu' B. Clam' in Cur' noſtr' &c. verſus præfat' W. ut jus & hæreditatem ſuam, per bre' noſtr' de ingreſſu ſuper diſſeiſinam en le poſt (or other Writ as the Caſe may be) Et unde idem W. in ead' Cur' noſtr' voc' præfat' M. ſum' in Com' tuo ad Warrantizand' verſus eum. Et habeas ibi ſum', & hoc bre' Teſte, &c. Raſt. 240. 286. b. Entr. bris'.

5. If upon the Return of the Cap' ad Valentiam, the Vouchee makes default again, Judgment ſhall be given for the Demandant againſt the Tenant, and for the Tenant againſt the Vouchee. The Entry thereof, Vid. Raſt. 240. b.

The Grand Cape ad Valentiam is thus——

The Writ of *Cape ad Valentiam.*

Rex, &c. Cape in man' noſtr' de terr' M. S. pro defectu ipſius M. ad valenciam un' Mii' &c. cum pertinen' in B. qu' A. in Cur' noſtr' &c. clam' ut jus & hærediatem ſuam verſus W. per bre' noſtr' &c. Et unde idem W. in eadem Cur' noſtr' voc' prædict' M. S. Sum' in Com' tuo, ad Warrantizand' verſus eum. Et die' Capcois' Scire fac' Juſtic' noſtr' &c. Per liter' tu' ſigillat', Et ſum' per bon' Sum' ſuum prædict' M. S. quod ſit coram &c. inde reſponſur' quare non fuit Coram Juſtic' &c. Et auditur' inde judic' ſu'. Et habeas ibi ſum' Et hoc bre' Teſt' &c. Raſt. Entr. 240. b. This Writ is always before the Vouchee has appear'd.

Petit Cape ad Valentiam.

The Petit Cape ad Valentiam, is upon default after Appearance, and differs not from this, ſave that (inde reſponſur' quare

non ſuit, &c. is left out, and he ſummon'd to hear Judgment. Upon the awarding of the Cape ad Valentiam, there goes out a Writ of Enquiry like wiſe, to enquire of the value of the Lands demanded, to the end the Sheriff may take the value into the King's hands, and the Action is continued in the mean time between the Demandant and Tenant, by dies dat. eſt, &c.

The Entry of the Cape ad Valentiam, and the Writ to Inquire of the Value, thus——

Ipſe (the Vouchee) non ven' & habuit inde diem per Eſſonium ſuum, ad hunc diem ſcilicet in Craſtinu', &c. Poſtquam ſum' &c. Ideo Capiatur in man' Domini Regis de terr' prædict' I. ad Valenciam, &c. Et unde &c. Et die' &c. Idem dies dat' eſt præfat' W. in propr' perſon' ſu' &c. Et quia neſcitur quantum prædict' tria Meſſuagia, &c. valent per annum ſecund' verum Valor' eorund' Præceptu' eſt Vic' E. quod per ſacrament' proborum &c. Extendi et appretiari fac' prædict' tria' Mes' ſecund' verum Valor' eorund' & Extent' et appretiat' qu' inde fecerit ſcire fac' hic ſub ſigillo, &c. Et ſigillis eorum, &c. Et tunc Capiatur de terr' prædict' I. ad Valentiam, &c. in forma prædict', &c. Raſt. Entr. 687. a.

Entry of the Cape ad Valentiam.

Record.

Ac inquirend' de valore.

5. **If the Sheriff Return Nihil upon the** Grand Cape ad Valentiam, **then an** al' & Plur' **is awarded, and if the ſame Return be made, then a** plus Plur' **with a** Sequatur ſub ſuo periculo, **which is the laſt Proceſs the Tenant can have to bring in the Vouchee, and if he do not then appear, the Tenant loſes the Land, and cannot have Judgment to recover in Value, but fails in his Voucher, and therefore it is call'd a** Sequatur ſub ſuo periculo. Co. 1 Inſt. 101. Br. Sequatur, &c. 4.

Al' plur', & ſequatur ſub ſuo periculo.

The Entry of the Grand Cape ad Valentiam, al' plur' and Sequatur ſub ſuo periculo, Vid. Raſt. Entr. Titl. Formedon 377. b.

6. **The Tenant is to Sue forth the** plus plur' ſum' or plur' Cape ad Valentiam, **and to ſee that the Sheriff Execute it which is the meaning of the awarding the** ſequatur ſub ſuo periculo, **which upon the** plur' **is always Entred thus——** Et dictum eſt præfat' W. (the Tenant) quod ſequatur ſub ſuo periculo

The Tenant to ſee the plus plur' Executed.

periculo, Idem dies dat' eſt partibus prædict' hic, &c. Vid. f. 170. Br' ſequatur ſub ſuo periculo. 4.

Upon default of the Vouchee at the Return of the ſequatur ſub ſuo periculo, its ſaid in Keilw. Rep. 41. That the Tenant muſt be call'd, and if he make default, a Petit Cape muſt be awarded, and not judgment till the Return.

The Tenants neglect upon the *Sequatur*, &c. ſhall loſe the Land.

7. And if the Sheriff Return not the Writ through the Tenants default, as if he do not ſue it forth, or deliver it in time, &c. or the like upon the Return, the Demandant may pray Seiſin of the Land, and alledge the Tenants neglect in not proſecuting the Writ through the Tenants default after the Sequatur ſub ſuo periculo. And all this may be obſerved in the Precedent before cited, Raſt. Entr. 377. b. 14 H. 6. 7. 42 E. 3. 13. If after the Sequatur, &c. the Writ be returned Tarde, the Tenant ſhall loſe the Land. Vid. Ceſtr. Record. f. 168.

Tarde upon the *Sequatur*, loſes the Land.

Returns upon Summons *ad Warr'* 9 at *Weſtminſter*; at *Cheſter, de die in diem.*

8. Upon every Summons ad Warrantizand' at Weſtminſter, there are nine Returns between the Teſte and the Return; but at Cheſter de die in diem, or more days within the week of the great Seſſions, but this is practiſed only in Common Recoveries, for in Actions that are adverſary, the Writ of Summons is returnable the nere Seſſions. Vid. Co. 2 Inſt. 240.

Entring into Warranty. Record.

9. When the Vouchee appears, and offers to warrant the Land to the Tenant, its called an Entring into the Warranty, &c. and is Entred thus——Et prædict' A. ſum' &c. per T. Attornatum ſuum ven' & gratis Maner' &c. cum pertinen' ei Warrantiz' &c. And this is when a Summons ad Warrantizand' has iſſued forth before, and the Vouchee appears by Warrant of Attorny; but if the Vouchee be ready in Court to Enter into the Warranty at the time of the Voucher, then the Entry is thus——Qui præſens eſt hic in Cur' in propria perſona ſua et gratis, &c.

Vouchee in *loco Tenentis.*

10. When the Vouchee has entred into the Warranty, he comes in loco Tenentis, and in judgment of Law, is Tenant to the Demandant, and then the Demandant Counts againſt him, as he did againſt the Tenant before. Co. 2 Inſt. 241. 8 E. 3. 61.

What

What Pleas the Vouchee may have after entring into Warranty.

1. By the Voucher, all Pleas which are in Esse at the time of the Voucher, are put into the mouth of the Vouchee by the Tenant, and the Vouchee shall plead them, and not the Tenant; and likewise many Pleas which came in Esse ex post facto, and therefore the Tenant cannot plead a Release made to him after the Voucher, but the Vouchee shall plead it. 5 H. 7. 49, 50. 14 H. 6. 7.

May have all Pleas in *Esse* at time of Voucher.

2. The Vouchee may plead the death of the Tenant after the Voucher, or that the Demandant hath taken Husband, or is Outlaw'd, or Excommunicated, puis le darrein Continuance, per Townsend. 5 H. 7. 59. 20 43 E. 3. 16. a.

What Pleas.

3. The Vouchee may plead in abatement of the Writ, that one Recovered against the Tenant, pending the Writ by Action tried, and after the entring into warranty; for the Tenant by the warranty may have all manner of advantage that the Tenant of the Land might have; but if the Recovery were before the entring into the warranty, then it seems the Vouchee shall not have this Plea against the Demandant, because he might have Counterpleaded the warranty by such Plea against the Tenant, as in Case of two Writs pending for the same Land, by the same person, the Vouchee shall not have the Plea against the Demandant, because he may plead it against the Tenant in Counterpleading the warranty, if the Tenant does not take advantage of it; but by Finchden, the Vouchee may have all the Pleas aforesaid against the Demandant. 41 E. 3. 11. a.

Abatement of the Writ.

4. The Second Vouchee may plead the death of the First Voucher. 14 H. 6. 20.

Death of the first Vouchee by the second.

5. If any of the Vouchees be within Age, the Voucher may Vouch such a one within Age, and pray that the Parol may Demurr, which is another great delay to the Demandant, and in Case the Demandant do averr that he is of full Age, Then the Process is first a Summons to be Viewd, then an al', a plur', and a Sequatur sub suo periculo, and

Infant, Parol Demurr.

Summons to be Viewd, *Alias plur' & Sequatur.*

and if he appear not at the Sequatur, the Land is loſt, but if he appear, and be attached to be of full Age, then Proceſs ſhall be awarded againſt him as Vouchee, i. e. Summons ad Warrantizand', al', plur', and Sequatur, &c. 14 H. 6. 7. 20. Vid. Ceſtr. Record. f. 166.

Infant makes default at the *Sequatur, &c.*

Quære, if the Vouchee do not appear to be view'd at the Sequatur, whether tenant the Demand or he that vouched him pays, or he cannot Recover in Value againſt him (as I conceive) becauſe no Proceſs went out againſt him as Vouchee, and he was never ſummoned; but if he be returned ſummoned to be Viewed, and be makes default, then Quære whether a Cape ad Valentiam may not iſſue againſt him, and I ſuppoſe it may.

Where the Vouchee muſt ſhew cauſe of his Voucher, or may Vouch generally.

Where Voucher is out of Com. Courſe.

Where the Voucher is out of Common Courſe, there he that Vouches is to ſhew ſome Cauſe of the Voucher, otherwiſe the Voucher may be over-rul'd; as when one Vouches himſelf for Ruling his Eſtate Tail, or himſelf as Heir, or his Brother as Tenant in Borough English, or two Brothers in Gavel-kind, and that the younger is within Age and the like, becauſe they are Vouchers out of Common Courſe. Co. 2 Inſt. 246. b. 40 E. 3. 14. 10 H. 7. 21, 22. 16 H. 7. 13. 43 E. 3. 19.

Counterplea of the Cauſe.

2. And the Demandant may Counterplead the Cauſe in ſuch Vouchers. Co. 2. Inſt. ibidem.

Voucher of the Tenant.

3. If one or two Vouchees vouch the Tenant or their Voucher, they ought to ſhew Cauſe, becauſe the Voucher cannot ſtand with a Common intent. 11 H. 4. 42. So if Baron and Feme vouch, and the Vouchee voucheth, the Cauſe muſt be ſhew'd. 44. E. 3. 38. b.

The laſt Vouchee vouches the firſt.

4. If there be ſeveral Vouchers over, and the laſt Vouchee vouch the firſt, Cauſe muſt be ſhewn, becauſe the Demandant cannot Counterplead the Voucher by the Statute, having admitted him as Vouchee before, and therefore Cauſe muſt be ſhewn, that the Demandant may Traverſe it. 20 H. 6. 2. b.

5. If

Demurrer of the Cause shew'd.

5. If the Cause be not sufficient, the Demandant may Demurr to it. 11 H. 4. 20. b. 14 H. 6. 4. b. As if one vouch, and shew a Deed hic in Cur' prolat' for Cause, and it appear by the Deed that he ought not to vouch by that Deed, the Voucher shall be over-rul'd, for he cannot bring the Voucher by any other Deed. Contr. 30 E. 3. 17. b. Or if it appear by the Cause shewn, that the Voucher hath nothing but a Possession, which is defeated by Recovery or Lawful Entry, the Voucher lies not. 9 H. 6. 49. b. 41 E. 3. 13. 15. 44 E. 3. 27. so if one be vouched, and by the Cause shewn it appear that he ought to have vouch'd another with him, the Voucher is to be over-rul'd. Rolls Voucher. 755.

Where Assignee must shew a Deed.

6. A man may vouch as Assignee without shewing the Deed of Assignment, if the thing may be granted without Deed; as if A. Infeoff B. and warrant to him and his Assigns, and B. Infeoff C. C. may vouch A. without shewing any Deed of Assignment, only alledging a Que estate of B. Co 3. P. 63. Lincolne Colledge Case. 26 E. 3. 75. 3 H. 7. 14. 21 E. 4. 36.

Where a Revoucher may be.

Revoucher where the Vouchee is return'd dead by the Sheriff.

1. If a man be vouched, & the Vouchee is Return'd dead by the Sheriff, upon the Return of the Summons ad Warr. the Tenant may vouch again, but yet with this Caution, that he cannot vouch a stranger out of the Blood of the first Vouchee without shewing Cause. 41 E. 3. 28. 29. 30 E. 3. 24. Quære. 38 E. 3. 27. b. 17 E. 3. 41. 22 E. 3. 3. b. Contr. So if the Vouchee die after Entring into Warr. no voucher at large. 4 H. 4. 1. vid. Rast. Entr. Formedon tit. Voucher 14. vid. Dier. 7. a. 13 H. 7. 25.

If the Vouchee after issue joined make default, and a Petit Cape be awarded, and the Vouchee die, no Judgment for the Demandant, but a Revoucher of one of the Blood of the first Vouchee. Keilw. Rep. 69. b.

Revoucher upon a new Original

2. But in a new Original, the Tenant may Revouch as large, though he vouched another before. 30 E. 3. 24.

What Courts are no places at Common Law.

Where the Tenant may revouch presently.

3. If one vouch, thereby Cause where he ought, when the Demandant Traverseth Cause the Tenant may waive the Voucher, and revouch presently. 17 E. 3. 47. But Quære whether he may revouch in such Case more than once, for if he should, upon the same Reason he may vouch ad infinitum.

Revoucher upon Return of *Cape ad Valentiam*, if the Vouchee be dead.

4. If the Vouchee make default upon the Return of the Cape ad Valentiam serv'd, the Tenant may say that the Voucher is dead, and revouch, because otherwise the Demandant would Recover the Land, and the Tenant could not Recover in value against a dead Person. 22 E. 3. 18.

Vouchers great delays.

5. But because vouchers are great delays to the Demandant, and therefore not to be Counterpleaded by the Law, when they are used only for delay, provision by Acts of Parliament is made for prevenring of unnecessary and dilatory vouchers, by giving the Demandant power to Counterplea the Voucher.

Where a stranger may be vouched, not Heir.

6. If the Voucher be Counterpleaded, and the Vouchee be Returned dead by the Sheriff, the Tenant may vouch a stranger, but if the Voucher be admitted, and the Vouchee be Return'd dead, he cannot vouch a stranger, but the Heir of him that was Vouched before. 12 H. 7. 9. Br. vo. 141. 14 H. 6. 7. p. 60. Br. 18.

Counterplea of Voucher.

What.

1. Counterplea of Voucher is a matter shewn by the Demandant in his Replication, why the Tenant in the Voucher ought not to be allowed such a Voucher.

Kind.

2. There are Counterpleas at Common Law, and Counterpleas by Statute, Counterpleas to the Person of the Voucher and to the Person of the Vouchee, Counterpleas by the Demandant and the Vouchee. 21 E. 4. 54. 40 E. 3. 37.

What Counterpleas at Common Law.

3. The Counterpleas at Common Law were several, as that there is no such Person as the Vouchee, 7 E. 3. 23. That the Vouchee is a villain, that the Vouchee is dead

and

and several other. Co. Just. 365. 246. Sect. 714. E. 2.

4. In Common Law the Demandant could not plead any Plea which was a Counterplea of the Warranty, and therefore the Statute of Westminster 1. c. 40. gave the Counterpleas there provided for; which Statute was made 3 E. 1: and has caused great delays in Voucher. What not: Joint-tenancy no good Counterplea.

5. Two sorts of Counterpleas are given now by that Statute, one applicable only to Writs of Possession, as Mordancester, Cosinage, Ayel, Nuper obiit, Intrusion, Befail, &c. so called because the Ancestor was seis'd the day of his death, or the Demandant was seis'd. Co. Lib. 6. f. 3. Markalls Case. 2. The other applicable both to Writs of Possession and Writs of Right, as Writ of Right Patent, Formedons, Escheat, Cessavit, &c. and other Writs of Right in their nature. Markalls Case, ibidem. Two kinds of Counterpleas by Statute. Time upon the Counterplea not abated by the death of the Voucher.

6. The Counterplea in Writs of Possession is thus—That the Tenant or his Ancestors whose Heir he is, was the first that Entred after the death of him of whose Seisin he demands the Land. 1. Counterplea by Statute.

The other, and the most Common Counterplea is thus—That neither he who is vouch'd to Warranty nor any of his Ancestors ever had any Seisin of the Land or Tenement demanded, neither in Fee nor Service by the hand of the Tenant or any of his Ancestors since his time, of whose Seisin the Demandant Counts to the time that the Writ was purchased, and the Plea mov'd, so that he might Infeoff the Tenant or his Ancestors. The Entry of the second Counterplea, vid. Rast. Entr. 687. b. Voucher 73 and 378. b. Formedon A. Voucher. 2. Counterplea by Statute.

7. By this Statute of Westminster 1. Vouchers are limited in Writs of Entry, which make mention of the degrees. None shall vouch any Person out of the Lien, i. e. out of the degrees. But in Writs of Entry in le post, the Voucher may be at large. What the degrees are, vid. Co. 2 Inst. 153. The Exposition of this Statute of West. vid. Co. 2 Inst. 239, 240, 241, 242. &c. Vid. Co. 2 Inst. 153. Stat. Marlebrige c. 30. 52 H. 3. The nature of Writs of Entry, and by that Statute, the Writ of Entry in the Post, is given in Case of more Descents than two. Vouchers in Writs of Entry limited, within the Degrees, *per Stat. W. 1.*

a Alienation then was, which Deeds of Alienations above two, are Called [illegible] and [illegible] Writ of Entry out of the Degree is called a Writ of Entry in the Post, and before [illegible] in [illegible] the Demandant was put to his Writ of Right.

Joynt-tenancy no good Counterplea.

8. It's no good Counterplea to say that the vouchee is joint-tenant with others not named, or that he never had any thing but as joynt-tenant. Br. Counterplea de Vouch. 44. 8 H. 7. 5. 14 H. 6. 9. pl. 40. Dyer 341. The which Case of Dyer is at large with the pleadings in Co. Entr. Tit. Formedon. from 318. b. to 338. b.

Issue upon the Counterplea not abated by the death of the Vouchee.

9. If the voucher be Counterplead, and the Parties be at Issue, the Issue shall proceed, and is not abated though the vouchee die, because he is no Party as per to the Record. 50 E. 3. 2. Br. Counterplea. Vo. 20. 10 H. 7. f. 21. Br. ibidem 43.

Voucher of a stranger.

10. If the voucher be Counterplead, and the Vouchee be Returned dead by the Sheriff, the Tenant may vouch a stranger without Cause shewed, but not if the voucher be admitted, and the Vouchee be Returned dead, he cannot vouch a stranger, but the Heir of him that was vouched before. 12 H. 7. 9. Br. Vo. 141. 14 H. 6. 7. Br. 18.

Vouchee may be praied to be summoned in the same County, because of Lands there.

11. If the Vouchee have Lands in the County where the Action is brought, the Demandant may prove it, and pray that he may be summon'd there, and this prevents the Record from being removed in Case of a Foreign Voucher upon a Deed of Vouchers or otherwise. 13 Ass. pl. 3. Br. Vo. 96. Contr. Br. Vo. 65.

Vouchee cannot Confess at *Westminster*.

12. Note that a Vouchee cannot Confess upon a Foreign Voucher in Banco, because they cannot take the Confession. Br. Vo. 1.

Joynt-tenant or Tenant in Common with the Vouchor, not good Counterplea.

13. It's no Counterplea at Common Law or by Statute, that he who is vouch'd, is Tenant in Common with the Vouchor, 17 E. 3. 47. b. And if he were joynt-tenant, I Conceive the Law is the same, for it amounts to a Counterplea of the Warranty which the Demandant cannot have, and comes in a great measure into the 8th Rule before.

14. He

14. [illegible] with Counterplea of the Grant [illegible] Gaskoin's, the [illegible] 17 E. 3. 47. b. mid. acres. Vouching Rule. 3. c. 6. [illegible] a Foreign Voucher upon a Deed of Vouchers, or otherwise. Revocatio prædictæ.

15. If upon a Counterplea or otherwise, the Voucher be disallow'd, the Entry is thus——Io. Considerat est quod vocare illud, fiet, &c. Raft. Entr. 687. b. Vo. 10. If the Voucher be disallow'd, thus——Io. Considerat est quod prædict. B. de vocar' ill' hend' præcludatur, &c.

Counterplea of Warranty.

1. As the Demandant may Counterplead the Voucher, so the Vouchee may Counterplead the Warranty, i. e. alledge Cause why he ought not to warrant the Land. Upon this Counterplea of Warranty, the Demandant cannot have other wise than as aforesaid by the Statute. 40 E. 3. 14. 44 E. 3. 21. 9 H. 6. 50. What.

2. It is a good Counterplea of the Warranty that the Voucher is in of another Estate than the Estate to which the Warranty is annexed, 14. H. 6. 26. Raft. Entr. Dower 240. 2. Voucher 2. Where.

3. A good Counterplea, that the Feoffment was made by him to the Voucher and a Stranger, and to the Heirs of the Stranger who is living, and not joyn'd in the Voucher. 17 E. 3. 74. So that he who is vouched, neither had any thing but by Disseisin, upon whom the Tenant re-entred. 9 H. 6. 49. b. So the Vouchee may plead that he is to warrant but a part of the Land. 18 E. 3. 49. b. 41. tho after entring into the Warranty generally he may shew he is to warrant but a Fee-tail, or an Estate for Life. Cum aliis several others, vid. Raft. Entr. 280. b. Formedon Voucher 24.

4. Upon Counterplea of Warranty, if the Warranty be disallow'd upon Trial or Demurrer, Judgment shall be forthe. Where Judgment shall be given for the Demandant.

forthwith given for the Demandant against the Tenant, but if it be allowed, Judgment shall be against the Tenant, and ouer in value against the Vouchee by the Statute of West. 2. c. 6. before which Statute the Tenant could have no other Judgment against the Vouchee, but that the Vouchee should warrant the Land which was a great delay to the Demandant. Co. 2 Inst. 366.

Demurrer ad. judged the same Term.

Note, if Counterplea of Voucher be adjudged against the Tenant, the same Term upon Demurrer, it is not Peremptory; but he cannot vouch again, but may plead in bar. 22 H. 6. 40. 42 E. 3: 16. But if it be Adjourned to another Term, it is peremptory, and Judgment shall be for the Demandant.

Proceedings how to manage a Deed of Vouchers in a Real Action.

IN the Statute of 13 Eliz. cap. 5. against fraudulent Deeds, &c. made to delay or hinder just and lawful Actions, &c. there is a Proviso, That that Act shall not extend to make void any Conveyance, by Reason whereof any Person shall use any Voucher in any Writ of Formedon; so that taking it for granted, That Deeds of Vouchers may be justly and lawfully used in these Actions; at least-wise I shall proceed to shew what a Deed of Voucher is, and how it is to be made, and how to be used in such Actions. It is a Conveyance made by him who hath a Title to Lands and Tenements defeasible by a Recovery in a Formedon to several Persons, the more the better, as will appear hereafter, to the intent to delay the Demandant in his Action.

2. It may be made by way of Feoffment, but the readiest and easiest way, and which is as good for this purpose, is to make a Lease and Release to one or two Persons, and his or their Heirs, to the use of such Persons, and their Heirs, as are intended to be Vouchees, with a Proviso contained in the Release, That if the Cestuy que uses, or some of them do not pay to the Releasor, naming him at any short day after the Date of the Release, a certain Sum of Money, the double or treble value of the Lands to be purchased, then the Conveyance to be void, &c.

3. This

3. This Conveyance muſt of neceſſity be made before the Teſte of the Original Writ of Formedon, otherwiſe it will be of no effect, Co. 2. Inſt. 245. and it muſt be made to ſome Perſons that the Tenant is ſure will be his Friends, for otherwiſe they may loſe his Lands by making Default when ſummoned, confeſſing the Action, or the like. After the Demandant has counted, the Tenant may demand the View; and upon the Return of the Writ of View, the Tenant may be Eſſoined; and if more than one Tenant, they may ſo by Eſſoine: And at the day given by the Eſſoine, the Tenant may have a general or ſpecial Imparlance; and at the day of the Imparlance the Tenant muſt either plead or vouch, and then comes in the uſe of the Deed of Vouchers.

4. And then it will be beſt to vouch only one of the Perſons in the Deed of Vouchers, becauſe the Deed of Vouchers will laſt the longer, and the Demandant cannot counterplead the Voucher, by reaſon that that Vouchee had a joynt Eſtate with the others, for by the Statute of Weſtminſter the firſt, cap. 40. the Demandant, as this Caſe is, has no other Counterplea to the Voucher; but to ſay that the Vouchee or his Anceſtor never had any thing in the Land by which he might have enfeoffed the Tenant or his Anceſtors, but that will do the Demandant no good: for though one Joyntenant cannot enfeoff another, yet being ſeized per my & per tout, he may enfeoff a Stranger of the whole, though it be a Diſſeiſin of his Companion, as to a Moiety, 8 H. 7.

5 & 6. Beſides, as the Lord Coke ſaies, 2 Inſt. 244. the words in the Statute, Dont il poit Feoffmens faire, is ſpoken but for Example; but a Fine, Releaſe or other Conveyance which giveth an Eſtate, is within that Law. And though the Eſtate of the Vouchees be determined by force of the Proviſo in the Deed of Vouchers, yet neither will that avail the Demandant; for if the Vouchee or any of his Anceſtors ever had any Seiſin, though it be paſſed or determined, yet it is ſufficient, Co. ib.

7. If the Vouchee be returned Summoned, then he may eſſoine, and at the day given by the eſſoine, he may vouch another of his Companions, and ſo on: and every Vouchee may have the like eſſoine. But ſo he muſt ſo the Demandant

as well as to the Tenant. If the Tenant vouches A. who appears and enters into the Warranty, and vouches B. who likewise Appears and Pleads to issue, which Issue is found for the Demandant, and before Judgment Enters, either of the Vouchees dies, and after the Demandant enters his Judgment to Recover against the Tenant, and for the Tenant to Recover against the first Vouchee, and for that Vouchee to Recover against the second; that Judgment will be intirely erroneous, Keil. 69. b. & 80. b. and so it will be as I conceive, if the second Vouchee makes default, and the first Vouchee dies before Judgment, and therefore in such Case the Demandant must be sure to suggest to the Court, that the Vouchee is dead, and pray a Resummons. vid. Br. Resummons 7. 39. & 47.

Proceedings in *Cheshire*.

8. The Proceedings in Cheshire are thus.—1. The Tenant vouches I. S. in the same County, against whom, if he appears not gratis forthwith, there goes forth a summons ad Warrantizand' Returnable the first day of the next Sessions, (unless by Consent sooner, as in Common Recoveries.) 2. If the Sheriff Return him summoned, he is to appear in Person, or by Attorney or Essoine; For he needs not a Dedimus potestatem as in a Writ of Entry en le post, in suffering a Common Recovery, the Reason see in F. N. B. 26. b. French. 3. At the Return of Summons, the Vouchee may Essoine, but that is but for one day, and every Vouchee may have one Essoine, at the day by the Essoine, the Vouchee is to appear, and then the Demandant is to Count against the Vouchee, and the Vouchee may imparle till first day of next Sessions, and then Essoine for one day, and at the Essoine day come he may vouch over some other Person in the Deed of Vouchers; and it may be one who has no Lands in Cheshire, but in another County, and this greatly delays the Demandant, for in such Case the Action is continued Usque prox' Sessionem de Sessione in Sessionem till it be Remov'd by Writ out of Chancery, Returnable into the Common-Pleas at Westminster, Where, when the Record is sent, the C. B. makes out a Summons ad Warrantizand' against the Vouchee, who at the Return of the Summons, may be Essoin'd, and at the day by the Essoine is to appear as before if he be return'd Summon'd; when the Vouchee has appeared, the Record is to be remanded to Chester, so that the Common-Pleas cannot admit of a Vou-

Essoine *per* Vouchee.

Remanded to *Chester*.

cher

day to be given to the Parties to the next Seſſions at Cheſter, and then the Vouchee is to appear, and the Demandant to Count as before, and the Vouchee may have the Dilatories as before, and then call to Warranty another of the Vouchees, who if he have no Lands in Cheſhire, then the Record is to be remov'd to Weſtminſter as before, Vid. Dyer 69. Pl. 35. ſee Regiſter. The Writ there which removes the Record from Cheſter upon a Voucher, fol. 6. Br. Voucher 152. 156. ſee Co. Entr. f. 342. tit. Formedon, where theſe proceedings upon a Record from Cheſter are Entred. Inter Egerton Petent' & Deane Tenen' for Lands in Smallwood, in a Formedon en diſcender. The Roll in Cheſter is 43 Eliz.

So that the C. *Pleas* cannot admit of a Voucher over before they remand the Record. *Vid Kelw.* 109. *b.* there argued.

9. By this Deed of Vouchers, much further delay may be uſed, if the Vouchee be an Infant Heir of one of the Feoffees, if he be vouch'd as Heir, then the Tenant may pray that the Parol may Demurr till the full Age of the Infant, and it ought ſo to do. Co. Entr. 321.

Paroll to Demurr.

10. And there may be a further delay ſtill, if the Sheriff return upon the Summons ad Warrantizand' that the Vouchee has nothing whereby he may be ſummon'd, then the Tenant may take forth an Al' and after a Plur' without any prejudice to him, and then a Plus Plur' (called a Plur' ordinarily) with a Sequatur ſub ſuo periculo, : But then at the Return of the Sequatur, &c. if the Tenant do not procure the Vouchee to appear, he loſes his Land, but if he appear, (which he muſt do in ſuch Caſe in Perſon) F. N. B. 27. c. 13 E. 3. Fitz. Attorney 74. he may vouch over as before. Vid. Fitz. tit. vo. 18. 13 E. 3. Proceſs in Cheſter upon a Cape ad Valentiam. And there it's ſaid, that no Sequatur ſub ſuo periculo ſhall be Entred, till after the Return of the Plur' i. e. upon the awarding of the plus Plur' (Except it be in Dower) for in Dower it's ſaid, it muſt be at the taking out of the Al'. There's a notable Record for this, 8 H. 4. inter Record' Caſtr' Ceſtr'. ad Com' die martis prox' ante Teſt' beat' Mar' Vir'.

Alias, Plur'. Sequatur ſub ſuo periculo.

Vi. Fitz. Voucher, 133. & 136.

Vid. f. 168.

11. If the Sheriff return Tarde upon the Writ of Summons ad Warrantizand', the Tenant may delay the Demandant to the Al', Plur'. and Sequatur ſub ſuo periculo, if the Tarde be return'd upon the Al' and Plur'. So that in Effect, by this Deed of Vouchers, the Land can never be

Tarde.

recovered, for what by Foreign Vouchers, Infants under Age, and other Dilatories, the Vouchers are never likely to be spent in the life times of the Demandant and Tenant, and if either of them die, all falls to the ground, and the Demandant or his Heir is to begin de novo, and the Tenant or his Heir may revouch all again. 30 E. 3. 24. b. Vid. contra fo. 56.

Vouchee hath Lands in *Lancashire*, vouch'd in *Chester*; how to proceed.

12. If a Voucher in Chester be made of one that has Lands only in the County of Lancaster, Quære, whether the Record must be remov'd into the Chancery by Certiorari from thence, and then sent by another Writ into the County of Lancaster, in order to Summon the Vouchee there, or that the Record is to be remov'd (as before in Case of other Counties that are not County Palatines) into the Common Pleas, for if the Common Pleas can Summon the Vouchee in a County Palatine to appear at Westminster to warrant, then the Question is out of doors, for then the Record must be remov'd to the Common Pleas; but if they cannot make such Summons than by Certiorari as before, In 26 E. 3. 59. b. Fitz. tit. Vo. 306. it's adjudg'd, That the Tenant pray that the Vouchee may be Summon'd in the County of Lancaster or Chester; the Writ shall issue thither, although that generally the King's Writ does not run there. Quære, of this Case.

26 E. 3. 59. b.

Cester. ff. 33 E. 3. Record.

In a Record inter Rot' in Castr' Cestr' inter Plita' Com' Cestr' tent' apud Cestr', coram Bartho' de Burgherse Justic' Domini Comit' Cestr' die martis prox' post claus' Pasch', Anno Regni Regis E. 3. 33. A Writ of Right is brought by William de Penreth & Margarita Uxor ejus, Et Elena qu' fuit Uxor Ade de Praiers versus Robert' de Wylaston et Margaria' Uxor' ejus, de duabus partibus tertiæ partis Maner' de Wystanston. Margery the Tenant, being received in default of her Husband, called to Warranty one Robert de Wermyncham Vicar' of the Church of Frodsha', and he appeared, and vouch'd over, and afterwards Warmyncham made default, and a Cape ad Valenciam was awarded against him; at the Return of the Cape, he appear'd, and to Excuse his default, he pleaded that both he and his Attorney were Imprison'd in Warrington in the Dutchy of Lancaster, and issue was taken upon it, and because the said issue could not be Tried in Cheshire, day was given to the next County. Et interim

interim Sequatur bre' Domini Regis, &c. And afterwards the Record was remov'd by Certiorari into the Chancery, and from thence to the Dutchy of Lancaster, where both parties Appear'd, and at the Return of the Venire, Warmyncham made default again, and then the Record was remov'd from Lancaster by another Writ out of Chancery into the Chancery again, and from thence sent by Writ to Chester, in order to have Judgment, and there Judgment is given against the Tenants to the Writ, and for the Tenants against Warmyncham the Vouchee. This Record is pleaded tempore H. 5. in an Assise of Novel disseisin, and Entred at large, with all the several Writs at large, Int' Plita' Com' Cestr' tent' apud Cestr' coram Gilberto Domino de Talbot, Justic' Cestr' die martis prox' post fest' Sanct' Trinitat' 4 H. 5. Cestr. ff. 4 H. 5.

There seems to be some difference between this and a foreign Voucher, because matter of Fact which is local, ought to be Tried in the proper County, and that can be done no other way, but by Certiorari. But Quære, whether this was such a Foreign Plea as was needful to be Tried in Lancaster, for I conceive the place of the Imprisonment was not material, and therefore the matter not local.

9. Note, if the Tenant Vouch an Infant as Heir, the Demandant may say that he is of full Age, and so go to issue, and then the Process is a Venire to summon the Infant to appear, and to be view'd by the Court; and if he be return'd (Nihil) then goes forth an Al' and a Plur', and another Writ with a Sequatur sub suo periculo, &c. and then if he appear not, whether the Sheriff return the Writ or not, the Tenant loses the Land. Therefore it highly concerns the Tenant to procure the Infant to appear at the Return of the last Process; and if by Inspection of the Court the Infant is judg'd of full Age, then goes forth a Summons ad warr', as before. Vid. Keilw. Rep. 85. b. Summons *ad habend. visu' Inf'* *Venire.*

So note, the Tenant may greatly delay the Demandant by alledging the vouchee within Age when he is not, Co. Entr. 320. inter Rotul' Cestr' ad Com' Cestr' tent' die Martis prox' post festum St. Luciæ Virgin', 3 H. 5. int' Willielm' Brereton Mil' & Nichol' fil' Roger' de Moldesworth in a Formedon in descender'. Vid. Rast. Entr. 379. b. Vid. postea for this Record more at large, f. 166. Cestr. ff. 3 H. 5.

Foreign Voucher of a Deed must be shew'd.

13. The Lord Coke in his Exposition of the 12th Chapter of the Statute of Glocester, Co. 2 Inst. 325. says that least foreign Vouchers should be used for delay, they must shew a Chantry, &c. comprehending warranty to the Court: But many Presidents are otherwise; but admitting that a Deed must be shewed, I conceive that must be understood of private Jurisdictions, as of Cities or other Corporations. And the Lord Coke in his first Inst. 102. a. seems to be of that Opinion.

CAP. XVIII.

Aid Praier.

What?

1. When Real Actions are brought against any particular Tenant, as Tenant for Life, by the Curtesie, or the like, because they had not the whole Estate in themselves to defend, they might pray in Aid of him or them in Reversion or Remainder to plead for them, to defend the Inheritance of the Land, and this is called (Aid prayer.)

Kinds.

2. This Aid is twofold, 1. Of the King. 2. Of a Common person for Aid of the King, Vid. Co. 2 Inst. 268, 269, 270.

Aid in personal Actions.

3. There's Aid likewise in personal Actions, as in Trespass after issue join'd, and in Replevin; but these are not to the present purpose. Vid. 22 H. 6.33.

Where to be allow'd or not.

4. In Assise, Aid shall not be allow'd of one who is a stranger to the supposal of the Writ, 14 H. 6. 22. Otherwise in a Writ of Entry in nature of an Assise, 14 H. 6. 22. 21 E. 4. 15. b.

Tenant in tail.

5. Tenant in Tail shall not have Aid of him in Remainder in Fee, because he hath an Inheritance, 2 E. 3. 46. nor Tenant in Tail after possibility, &c. because he once had an Inheritance in him. 2 H. 4. 17. b. 11 H. 4. 15. 39 E. 3. 16.

6. Lessee

6. Leſſee for Life, Remainder in Tail, Remainder in Fee, the Leſſee ſhall have Aid of him in Remainder in Tail, 41 E. 3. 16. b. Leſſee for life.

7. In Real Actions Aid ought to be demanded at the firſt day the Tenant hath to plead, i. e. before Imparlance, 3 H. 6. 5. and ſhall have Aid before Plea pleaded and Iſſue taken, 4 H. 6. 30. b. For after Plea pleaded no Aid ſhall be granted, 4 H. 6. 30. b. 8 H. 4. 16. When to be demanded.

The Entry of Aid praier is thus——

Et prædict. *A.* per *T.* Attorn' ſuum ven' & dic' quod,&c. (here's the Cauſe of Aid pleaded) Et ſic idem *A.* dicit qd' ipſe tenet & die impetrationis Brevis Original' prædict. *R.* tenuit Tenement' pd' cum pertinen' pro termino vitæ ſuæ remaner' inde præfat' *B.* & hæred' maſcul' de corpore ſuo exeun' ſine quo ead' *A.* non poteſt Tenement' præd' cum pertin' in placitum deducere neq; præfat' *R.* inde reſpondere Et pet' auxilium de ipſo *B.* &c. Et ei conceditur, &c. Io' præcept' eſt Vic' quod ſum' per bon' ſummon' prædict' *B.* quod ſit hic a die Paſch. in quindecim dies ad jungend' cum præfat' *A.* ſimul, &c. in reſpond' præfat' *R.* de præd' placito ſi, &c. idem dies dat' eſt partibus præd' hic, &c. *Co. Entr.* 327, & 341. 49. a. Entry. Record.

8. Upon demand of Aid, and granted, a Judicial Writ is to be ſued out by the Tenant (call'd a Summons ad auxiliand') at the Return of which if the Praiee do not appear or Eſſoine, and after make default, Judgment is entred qd' defend' ou tenens ſol' reſpondeat, 27 H. 8. 4. 4 H. 6. 30. Summons *ad Auxiliandum.*

The Summons *ad auxiliand'* is thus——

Rex Cum *J.* in Cur', &c. pet' verſus *W.* unum Meſſuag', &c. in *E.* de quibus idem *W.* injuſte & ſine judicio diſſeiſivit præfat' *J.* poſt prim', &c. (but note infra tricesim' an', &c.) ut dic' idemq; *W.* poſtea ven' in ead' Cur' noſtra & dixit quod quidam *W. W.* nuper fuit ſeiſit' (as in the Writ when Aid was demanded) &c. Et petiit auxilium de ipſo *W. VV.* qd' ei conceſſum fuit Et ideo tibi præcipimus qd' ſum' per bon' ſum' prædict. *VV. VV.* quod ſit coram, &c. in Oct. Sti. Hillarii The Writ of Summons *Ad Auxiliandum.*

larii ad reſpondend' præfat' *J.* ſimul cum præfat' *W.* de præd' pl'ito ſi voluerit Et habeas ibi ſum' & hoc Bre', *Raſt. Entr.* 271. b.

This is a Writ of Summons ad auxiliand' in a Writ of Entry ſur Diſſeiſin; the like in other Actions mutat' mutand'; but the Writ may be made ſhorter than ſetting forth at large the Eſtate of the Praiee in Aid, only alledging that the Praiee is ſeiſed in Fée, and that the Tenant has only an Eſtate for Life, &c.

The Entry of Judgment upon the Default of the *Praiee in Aid* upon the Summons return'd.

Entry Record.

Ad quem diem coram Domina Regina apud *W.* ven' tam pd' *J.* quam præfat' *S.* per Attorn' ſuum pd' Et præd' *A.* (the Praiée) licet ſum' non ven' Ideo conſideratum eſt quod pd' *S.* (the Tenant) ad narrationem prædict' ſine pd' *B.* præfat' *J.* reſpondeat, &c. *Co. lib. Entr.* 49. a.

And upon Default after an Eſſoine by the Praiee. Vid. Raſt Entr. 27. a.

Where Aid ſhall be granted a ſecond time.

9. In ſome Caſes Aid ſhall be granted of another after Aid was granted before. As if one Coparcener who is prayed in Aid by another, make Default, the Coparcener Tenant may pray in Aid of another, from whom the Land originally was deriv'd; as if the Brother make Default, Aid may be prayed of the Uncle upon a Partition made between the Father of the Tenant and the Uncle, 17 E. 3. 12. b. So the Leſſee for Life, after Aid of him in Reverſion, who dies, ſhall have Aid of his Heir, 31 H. 6. 10. And ſo if the Heir after dies, he ſhall have Aid of his Heir, 21 H. 6. 38. b.

After Judgment to anſwer ſole.

10. After Judgment to anſwer ſole, yet in ſome Caſe Aid may be prayed and had after, as if he in Reverſion make default, who was prayed in Aid by Baron and Feme, if after the Husband make default and the Wife is receiv'd, ſhe ſhall have Aid againſt him in Reverſion, 12 R. 2. Aid. 123. Fitz. Abr.

11. But

11. But because Aid praier as well as Vouchers are great Delays to the Demandant, and may be false as well as Vouchers, therefore the Law has provided Counterpleas of Aid as well as of Vouchers; of which observe what follows——

Counterpleas of Aid.

Counterpleas of Aid.

It is a good Counterplea of Aid, That the Praiee hath nothing in the Reversion, 12 H. 6. 1. or Remainder; or that the Praiee did not demise the Land to the Tenant, Rast. Entr. 27. The Entry of a Counterplea. Vid. Rast. Entr. ibid.

Counterplea of Aid.

What is a good Counterplea?

And now having gone through those Incidents that wait upon Real Actions after Appearance, and before Pleading to the Action, I come to those that are Incidents after Appearance and after Pleading, as Essoine, Default, Petit Cape, Departure in despite of the Court, Receit, Judgment, of which some have been spoken of before, as Essoin and Default, and therefore of them less shall be said here; the time when they are, i.e. (after Pleading) only makes the difference.

CAP. XIX.

Essoine after pleading.

1. AS the Tenant may be Essoin'd before Appearance and after Appearance before Pleading, so he may be Essoin'd after Pleading. As upon the Return of a Venire fac', Hab. Corpor, and other Judicial Writs, 7 H. 6. 14. Dyer 324. b. 21 E. 3. 38. b. 7 H. 6. 14. But in Personal Actions no Essoine is allowable upon the Hab. Corpor, or Distringas, by the Statute of Westminster 2. c. 27. Co. 2. Inst. 417. Neither can the Demandant or Bailiff be Essoin'd in a Real Action upon the Hab. Corpor, Rast. Entr 316. a.

Essoine after Judicial Process as *Venire, Hab. Corp.*

2. If

Every Tenant one Eſſoine.

2. If there be ſeveral Tenants, they may have every one one Eſſoine after Appearance and Pleading as well as before, Co. 2. Inſt. 126. and 250. Weſtm. 1. c. 43. 2 E. 4. 10. And therefore I conceive the Caſe of Eſſoins in Hob. Rep. f. 8. is miſtaken, which reſtrains Eſſoining ſeverally to a Writ of Partition.

Weſtm. 1. c. 43. Marlebr. c. 13. Weſtm. 2. c. 27.

3. The Statute of Weſtminſter 1. c. 43. was made to prevent tourching by Eſſoine; the Statute of Marlebrige, c. 13. to prevent any more than one Eſſoine after iſſue join'd in Perſonal Actions, and the Statute of Weſtminſter 2. c. 27. limited that one Eſſoine to the next Proceſs. But Real Actions ſtand as to Eſſoines as they were at Common Law. The next thing in Rule is Default after Appearance.

CAP. XX.

Default after Appearance.

What.

1. DEfault after Appearance, differs nothing in the nature of the thing from default before Appearance, ſave only in the Circumſtance of time, that the one is the not Appearing nor Eſſoining upon the Return of the Original, and the other is not Appearing, or Eſſoining upon the Return of ſome mean Proceſs, or ſome other day given when he has appear'd before to the Original.

Petit Cape to be awarded.

2. In the firſt place, the Tenant ſhall loſe his Land upon the Return of the Grand Cape, in all Præcipe quod Reddats if he cannot ſave his default as is ſhew'd before; in the other Caſe, a Petit Cape ſhall be awarded, and upon the Return of that, if the Tenant cannot ſave his default, he ſhall loſe his Land in all Præcipe quod Reddats.

Grand Diſtreſs, in lieu of a *Petit Cape*.

3. In Caſe of default after Appearance in ſome Actions, a Grand Diſtreſs ſhall iſſue in lieu of a Petit Cape, Vid. contra c. Diſtreſs.

4. In

4. In Real Actions, Default after Apperance is several ways, 1. At the Return of the Writ of View, Old N. B. 162. 2. At the Return of the Venire fa' Raft. Entr. 30. 279. 3. At the day given to wage Battle in a Writ of Right, Raft. Entr. 103. b. 4. After an Imparlance the same Day, which is called a Departure in despite of the Court, Raft. Entr. 149. 5. 5. At the day given by an Essoine, Raft Entr. 30. a. 6. At a day given in a Superior Court, the Record being remov'd from the Inferior by Certiorari or the like, as in Dower, Ne unques accouple, &c. and in other Cases. Raft. Entr. 229. a. b.

Default several ways.

5. Note, that in some Cases judgment shall be given without a Petit Cape first awarded; in other Cases a Petit Cape must first issue. Without a Petit Cape, as in the Case of default at the day given to wage Battle in a Writ of Right; in the Case of Departure in despite of the Court, and in several other Cases in our Books; as in Case an issue be found for the Demandant, and after the Tenant make default, judgment shall be given without a Petit Cape, for after Issue and Verdict, nothing remains but judgment. 4 H. 6. 28. So if if the Tenant claim fee in a Quid Juris clam', and after make default. 30 E. 3. 29.

Where Judgment without a Petit Cape.

Upon default, at the Return of the Venire fac' in all Præcipe quod Reddats, a Petit Cape shall be awarded, and a Distringas in lieu of a Petit Cape in Actions that are in the Realty, as in Writs of Customs and Services, Writ of Measne, and other Writs where Attachment and Distress lie in the mean Process, for the Inquest shall not be taken by default in any Real Action. 30 E. 3. 29.

Petit Cape upon Return of *Venire fac'*

No inquest to be taken by default in real Actions.

6. In a Quare Impedit, the Defendant appears, and after makes default, at the Return of the Venire a Writ to the Bishop shall be awarded, and the Inquest not to be taken by default, nor a Distringas first in lieu of a Petit Cape. Pasch'. 12 E. 2. Q. Imp. 168. The Reports lately Printed.

In Q. *Imped.* Writ to the Bishop, and no *Distringas* upon default.

7. Upon the default, the Petit Cape is made by the Prothonotary Teste the Chief Justice, and ought to have fifteen days at least before the Return, as well as the Grand Cape, but in Cheshire, two or three days is sufficient, if

Return of the *Petit Cape* 15 days.

How in *Cheshire*

it be in the time of Sessions. Br. Grand Cape. 36.

The Petit Cape Runs thus——

Writ of *Petit Cape.*

Rex, &c. Vic' B. salutem. Cape in manu' nostr' un' Mess. &c. in C. qu' S. in Cur' nostr' coram Justic' nostris Cestr' apud Cestr', vel apud Westminst' clam' ut jus suum versus M. pro defectu ipsius M. Et sum' per bon' sum' prædict' M. quod sit coram Justic' nostris Cestr' apud Cestr' primo die prox' Session' Comitat' Cestr' apud Cestr' tenend' vel die Sabat' prox' futur' ist' eadem Session' vel apud Westmin' in Octab' St. Hillarii auditur' inde judic' suum Et habeas ibi sum', &c. Et hoc bre' Test' I. S. &c. Justic', &c.

The Return of the Sheriff upon the Writ is thus.——

Return.

Virtute istius bris' mihi direct' tal' die & anno cepi in manus Domini Regis Tenementa prædict' infrascript' cum pertinen' prout interius mihi præcipitur.

A. B. Vic'

Vid. fol. 26. Grand Cape, and comparing the Grand Cape and Petit Cape together, the words in the several Writs do shew wherein they differ.

But because (Departure in despite of the Court) is a special default upon which judgment shall be given without a Petit Cape first awarded, and is an ordinary Default, upon which Judgments are given in Common Recoveries, something shall be said of that in the next Chapter.

CAP.

CAP. XXI.

Departure in delpite of the Court.

1. A Departure in delpite of the Court, is when the Tenant when he hath appear'd, and such a day given him by Imparlance, or the like, the same Term, or if he do not appear when he is call'd, this is a Departure in delpite of the Court, and Judgment shall be given for the Demandant without a Petit Cape; because the Tenant in such Case is always intended in Law, to be present in Court, and for his Contempt he shall lose his Land. Vid. Nomo-Lexicon Tit. Departure in delpite, &c. and 9 H. 6. 58. Vid. postea. What.

2. But if he Imparle to another Term, and at the day make default, this is no Departure, but a Petit Cape shall be first awarded, Br. Departure in, &c. 2. Contr. 7 H. 6. 39. Yelvert. Rep. 211. Lilburn verl. Heron. Imparlance to another Term, no Departure then.

3. But by Co. lib. 8. Beecher's Case, f. 62. it's there said, That if a certain day be given to the Tenant by Imparlance, if he do not appear, it is no Departure, speaking indefinitely as to the same or another Term, which I much question for Law, as to the same Term; for in 7 H. 6. 39. it's agreed, that if in the same a day certain be given upon an Imparlance, or that no day certain be given, but a Licentia interloquend generally, if the Tenant or Vouchee do not appear when he is call'd, it is a Departure in delpite of the Court, and Seisin of the Land shall be awarded, as the Practice is in all common Recoveries. And the Recoveries in the Court of Great Sessions of Chester are entred upon the Default of the common Vouchee, i. e. after the common Vouchee hath appear'd and pleaded, then the Demandant imparles generally the same Sessions without any certain day (petit licentiam inde interloquend & habet, &c.) and then comes into Court again; and the Vouchée being call'd, makes Default, which is a Departure in delpite of the Court, being in the same Sessions, and the Vouchée having no day given him by the Court, nor imparling to any day certain, but being always intended to be present, therefore Judgment is entred without a Petit Where no Departure if a day certain be given. Common Recoveries in Chester. Judgment given upon Default of the Vouchee.

Entry of a Departure.

a Petit Cape thus—— Et prædict' *B.* (the Vouchée) licet solemniter exact' non venit sed in contemptum Curiæ recessit & defalt' fecit Io' consideratum est quod prædict' *A.* recuperet Seisinam su', &c. Vid. 3 *H.* 6. 14. 38 *E.* 3. 13. 18 *E.* 4. 41. 14 *H.* 8. 2. See all this cases, Helv. 211. Lilburn vers. Heron; and Cr. 2. p. 292. the same Case.

No Departure upon *Dies dat.* to another Term or Sessions.

4. If a day be given by the Court upon Continuance or Process by Dies dat' est tam quam, beyond the same Term, and then the Tenant make default, this is no Departure; for he departeth with the Licence of the Court; but in such Case a Petit Cape shall be awarded, 7 H. 6. 39. 41.

Difference between *Retraxit* and Nonsuit.

5. Note, That the Demandant may withdraw (called a Retraxit) in Despite of the Court, as well as the Tenant, Vouchée, or Praiee in Aid, may depart in despite of the Court; in which Case Judgment shall be given for the Tenant, and the Demandant shall not be Nonsuited, though he would. As if the Defendant or Tenant appear and imparle the same day, and after come into Court, and the Demandant makes Default, this is a (Retraxit) in Contempt of the Court, and a Bar to the Demandant. But if the Tenant imparles to another day certain, though it be in the same Term or in another Term, and the Demandant then makes Default, this shall be counted a Nonsuit of the Demandant, and not a Bar. For in the first Case the Demandant is not demandable, being one and the same day, and therefore always intended to be present in Court; and if he withdraw himself, he shall be barred, as is aforesaid. But in the other Case the Demandant is demandable, in Judgment of Law, being not present in Court; and therefore if he appear not, being called, may be Nonsuited, 3 H. 6. 14. Br. Departure in despite, &c. 1. And there it is said the same Law is of the Vouchée or Tenant, which seems to confirm Coke's Opinion in Beecher's Case, That if the Tenant do imparle to a day certain, though it be in the same Term, and then make default, this is no Departure in despite of the Court, but a Petit Cape shall be awarded, 20 E. 2. Excom. 28. Vid. Beecher's Case. Co. lib. 8. 62. The Entry of this Retraxit.

Where Demandant may be Nonsuited, where not.

6. In

Receit upon default of a Tenant for Life.

6. In Case of Default of a Tenant for Life against whom a Præcipe is brought, he in Reversion may pray to be receiv'd, to be made a Party to the Writ to defend his Right and to prevent the losing of the Land, and this leads to the last Question in the method, viz. Receit.

CAP. XXI.

Receit.

Whit.

1. Receit or Receptio, is the admission of a Person, a party to a Writ, or a Stranger thereunto, unto whom a Reversion or Remainder appertaineth, in default of another Person to defend his or her Freehold or Inheritance; The Law saith, Admittatur. vid. Co. 11 Inst. 194. b.

Two Actions Concurr.

2. And in this Case two Actions Concurr; One between the Demandant and Tenant, and the other between the Tenant by Receit and the Demandant. Co. ibidem.

Receit by Stat. of *W.* 2. c. 3.

3. This Receit is given by the Statute of Westminster. 2. c. 3. 1. In Case where a Præcipe is brought against Husband and Wife, for the Land of the Wife: if the Husband make default or render the Land, or upon Nihil dicit, the Wife may be receiv'd to defend her Right before Judgment given. 2. To him in Reversion or Remainder, where an Action is brought against Tenant in Dower, by the Curtesie, after possibility of Issue extinct, or any other Tenant for Life, and they make default or render. Co. 2 Inst. 345.

Termor may be receiv'd though party to the Writ. Stat *Glo.* 6 E. 1.

4. A Termor, though he be Party to the Writ, may be receiv'd by vertue of the Statute of Gloucester, 6 E. 1. for he may be made a Party by Covin. 3. Leon. p. 168. Williams v. Drewry. But this Statute extends only to give Receit to a Termor in Case of the default or Reddition, but says nothing of Faint pleading; but now the Stat. of 21 H. 8. c. 11.

Gives

Q. whether Tenant per elegit, or Stat. March. be not Termors within this Stat. *Vid. Keilw.* 109 *Hern Pl.* 353.

In what Cases the Stat. of *W.* 2. *c.* 3. Extends.

Gives Receit to the Termor both upon Default, Reddition, and Faint pleading; vid. the Statute of Gloucester Expounded per Coke Lit. 46. The Case of a Termor, Exception is disallowed, but no judgment giv'n.

5. The Statute of Westminster 2. c. 3. Extends only to Default, Nient dedire, or Render, and not to Faint pleader which is remedied by the Statute of 13 R. 2. c. 17. as to them in Reversion or Remainder: But Quære, whether the Wife shall be receiv'd upon a Faint pleader of the Husband, and it seems not, unless she be within the Equity of the Statute of Westminster 2. c. 3.

Time of Receit.

6. The time of praying to be receiv'd, is when judgment is to be given for the Demandant, without further Process, as if the Tenant appear, and after he depart in Despite of the Court, then he in Reversion is to be receiv'd. Co. 2 Inst. 346. 7 H. 4. 15. 3. Cr. p. 826. 13 H. 7. 35. So no Receit of the Wife for default of the Husband till Return of the Grand Cape or Petit Cape, as the Case may be. Keilw. Rep. 35. b.

Count *de novo.*

7. When he in Reversion is receiv'd, then the Demandant shall Count against him de novo, so that if the former Count were not good, no advantage shall be taken of that, for by the Receit, the former Count is wav'd. 33 H. 6. 53. 3. Cr. p. 826. Co. 2 Inst. 345.

What Pleas he may plead.

8. He that is Receiv'd, may plead almost all Pleas, and take all Advantages as the principal Tenant might have done, as Age, Voucher, Aid Prayer, and the like. Br. Receit 62. 21 H. 6. 28. Co. 2 Inst. 346. He that is receiv'd, may be Essoined.

Cannot Imparle

9. He that is receiv'd cannot Imparle, and if he make default, it is peremptory, and judgment shall be Entred against the principal Tenant, without taking notice of the Tenant by Receit; because the Tenant by Receit ought always to be ready in Court, parat' petenti respondere. 21 H. 6. 48. 1. Cr. p. 262.

Entry

Entry of Receit of the Feme upon Default of the Husband upon the *Petit Cape* thus——

Salop' ff. Et Vic' modo mand' quod capit, &c. Et qd' fum', &c. Et ſuper hoc prædict' *A.* (the Demandant) pet' Seiſinam Tenement' prædict' cum pertin' per defalt' prædict' *J.* (the Tenant) ſibi adjudicari, &c. Et ſuper hoc prædict' *B.* (the Tenant by Receit being a Feme, in default of her Husband) in propria perſona ſua ven' & dic' quod Tenement' prædict' ſunt jus ſuum unde ex quo ipſa ven' ante judicium redditu' parata præfat' *A.* (the Demandant) reſpondere & jus ſuum defendere pet' quod ipſa per defalt' *J.* (the Tenant her Husband) viri ſui non amittat inde jus ſuum ſed quod admittatur inde ad defenſionem juris ſui, &c. Et admittitur, &c. Et ſuper hoc, &c. (the Tenant by Receit pleads in Abatement of the Writ) Raſt. Entr. 30. a. in Ayle. Record.

Note, That the Wife being party to the Writ, needs not ſhew any Cauſe to be receiv'd, but a Stranger muſt ſhew how he has the Reverſion in him, 33 H. 6. 39. Co. 2. Inſt. 345. as in the Entry before and hereafter may be obſerv'd. Where cauſe of Receit muſt be ſhew'd.

The Entry of Receit of him in Reverſion, where the Tenant makes Default upon the Return of the *Grand Cape*. Entry.

Norfolk. ff. Et Vic' modo teſtatum eſt cap'onis &c. Et qd' ſum', &c. Et ſuper quo prædict' *J.* (the Demandant) pet' Seiſinam Tenementor' prædict' cum pertinen' per defalt' prædict' *N.* ſibi adjudicari, &c. Et ſuper hoc ven' *A. B.* hic in Cur' in propria perſona ſua & dic' quod quidam, &c. (and then pleads how ſuch an one was ſeis'd and leas'd, and ſhews how the Reverſion came to him)—— Unde ex quo iple ven' ante judic' reddit', &c. as before—— Raſt. Entr' 140. a. b. Cui in vita.

Vid. The Entry of a Receit of a Feme in Reverſion upon a (Feint Pleder) where a Leaſe and Reverſion is pleaded by Fine ſur Grant & Render', *Raſt. Entr.* 29. a. Ayle. and 581. a. where the Leaſe and Reverſion is pleaded.

Note,

Feint Pleder what.

Note, That a Feint Pleder is where the Plea is falſe and covenous, or where the Tenant does not that which by Law he ought in order to defend the Land of Cadin between him and the Demandant; as when the Tenant for Life neither prays in Aid of him in Reverſion, nor vouches him to Warranty.

Counterplea of Receit.

10. Receit may be counterpleaded as well as Voucher and Aid praier to prevent delay. And the common Counterplea of Receit is, That he who prays to be receiv'd, had nothing in the Land, i. e. the Reverſion at the time of the Writ brought. But there are other Counterpleas likewiſe: As, 1. Where a Reverſion is created hanging the Writ, 4 E. 4. 14. 18 E. 4. 25. Raſt. Entr. 582. a. But if the Reverſion deſcend pendente Brevi, I conceive he may be receiv'd. Raſt. Entr. 374. b. Formedon ſeems to warrant ſo much. 2ly. Where he who prays to be receiv'd, was pray'd in Aid by the Tenant for Life, and refus'd to joyn, 4 E. 2. 160. 18 E. 3. 13. Co. 2. Inſt. 345.

Keil. Rep. 71.

Entry.

The Entry of the Counterplea, is thus——

Suffolk. ſſ. Et prædict' *A.* non cogn' aliqu' per prædict' *S.* ſuperius allegat' dic' quod idem *S.* ad aliquod jus de Meſſ. &c. prædict' modo petit admitti non debet quia dic' quod die impetrationis bris' ſui prædict' ſcilicet tali die, &c. anno, &c. pd' *S.* nihil habuit in Reverſione eorund' Tenementor' cum pertinen' Et hoc parat' eſt verificare unde pet' judicium & Seiſinam tenement' ill' ſibi adjudicari, &c. *Raſt. Entr.* 581. b.

Judgment now comes next in order, which is the end of all Real Actions, and the Conſummation of all Judicial Proceſs and Proceedings.

CAP.

CAP. XXIII.

Judgment.

1. JUdgment, quasi Juris dictu' this word is derived of Latin, viz. Right, and Dicendo Scripta per reverentiam accipitur. Co. Lit. 39. What.

2. In Real Actions some Judgments are Final, some not Final, some Interlocutory, some Definitive as the last Judgment. Final, such as do so bar all Right and Claim, that be, against whom such Judgment is given, can never have any more Action, by the Law, to sue or claim the same in Force aforesaid. As Judgment in a Writ of Right upon the [Mise] Joyned, or Default by the Demandant. Such Judgment in Assize is Final. Interlocutory, are such, as after which, there is further Judgment to be given in the same Cause, as is Partitione facienda, &c. that is, Quod partitio fiat, and upon Execution to enter, and Return'd by the Sheriff, there the Definitive Judgment is Quod Patricio prædict' firma & stabil' imperpetuum remaneat, &c. Co. 1 Inst. 294. Dyer. 301. Co. 1 Inst. 267. Co. lib. 11. f. 40. a Sorts. Final. Interlocutory.

3. Regularly, every Judgment ought to be given according to the Original Writ, both in Real and Personal Actions, 12 E. 4. 6. Co. 2 Inst. 236. But therefore if that be Demandant's Judgment cannot be given as one thing in the Writ, and another in the Count, for the Writ is the Ground of the Action, and the Count pursues the Writ, and the Judgment ought to be according to the Count, and right of the Writ. 2. [illegible] may be [illegible] ges for his Money taken upon Mis-Action. Co. Inst. 236. b. Judgment must be according to the Original.

4. Judgment is to be [illegible] when the Matter is hasting; and that may be either by Confession and Judgment of Law, as 1. When a [illegible] after Appearance, and [illegible] direct Acknowledgment of the Action, or by Verdict of 12 Men. Rast. Entr. 367, 368. a. See When to be Entred:

the Entry upon Confession and Default, and nient dedire, Co. Entr. 327. b.

Sometimes not upon default till the Jury inquire upon the Points in the Writ.

5. Note, that in some Cases Judgment shall not be Entred upon Default, till the Jury have inquir'd of the Points in the Writ, and if these be not found true for the Demandant, Judgment shall be Entred for the Tenant, notwithstanding the Default. As in an Assise of Mord'ancestor, the Jury shall inquire of the three Points in the Writ, viz. whether the Ancestor was seised in fee the day of his death. 2. Whether the Ancestor died within 50 Years next before the Test of the Writ, 3. Whether the Demandant be next Heir the time that he died. Co. 2 Inst. 399. 4 E. 2. Mordanc' 38. 31. Mordanc' 58.

How Entred.

6. In Præcipe quod Reddats, The Judgment for the Demandant is always that he shall recover Seisin of the Land. Ideo Consideratum est quod prædict' S. recuperet Seisinam suam de Mes' prædict' cum pertinen' per default (if it be by Default) Et prædict' I. in mia' &c. If it be by Confession, then it is,——Quod recuperet Seisinam suam de Mes' prædict' cum pertinen', & habeat de mil' ipsius A. quia ven' prædict' per sum' &c. if the Confession be upon the Default.

Damages and Costs, none at Common Law.

7. And Note, That in no Real Actions the Demandant did recover Costs or Damages at Common Law, i. e. in purely Real, for in some mixt Actions he did, as in Dower, Writs of Entry in nature of an Assise, in Attaint, vid. Co. 2 Inst. 286. Co. lib. 10. Pilford's Case, 116. 3 H. 4. 16.

Stat. Glouc. c. 1. first Stat. which gave damages. Except Stat. Merton. c. 1.

8. The Statute of Glocester, c. 1. in the 6 E. 1. was the first Statute (Except the Statute of Merton c. 1. which gave Damages in Dower under nihil habet) that gave Damages in Real Actions, viz. in three particulars. 2. In a Writ of Cosinage, 2. Ayel. 3. Besayel. 4. A Writ of Entry sur disseisin. 5. Assise d' Mordancestor. 6. In all Real Actions grounded upon the Intrusion, or son tort demesne of the Tenant.

Counts not to Damages.

9. In Real Actions, the Demandant never Counts ad dam', but he shall recover Damages praying the Writ in such Actions where Damages are given. But a Warrantia Chartæ

Chartæ is Excepted out of this Rule, for there the Plaintiff did declare ad dam' 21 E. 3. 57. b. Rast. Entr. 396.

Where a Writ of inquiry shall be awarded.

10. And because Damages in some Cases are recoverable pendente bri' A Writ of Inquiry of Damages shall be awarded: As in a Writ of Entry sur disseisin, the Demandant shall recover Damages from the Disseisin to the time of the Inquisition awarded, and not after, as per 33 H. 6. 47. a. In other Præcipe quod reddats, Damages shall be recovered from the disseisin or wrong done, &c. to the time of the judgment given, but if it be upon a Verdict, but to the time of the Verdict, if the Court do stay judgment upon a Cur. advisar' vult, ibidem, Quære ration'.

From what time damages are recoverable.

11. In a Præcipe of a Rent of the Demandants own Possession, he shall recover the Arrears pending the Writ Usque diem judicii reddit', because it is his Inheritance. 33 H. 6. 47. 7 E. 4. 5. 40 E. 3 24. 16 H. 7. 5. a. b. Co. lib. 10. Pilfords Case. Co. 2 Inst. 286. But 33 H. 6. 37. b. semble contra, so in Assise of Rent, ibidem.

No damages recoverable in some Actions at this day.

12. In Real Actions Ancestrell droiturell, as in Writs of Right, and Writs of Right in their nature, viz. Formedons, Partitione faciend', and all others (Except Dower unde nihil habet) no Damages are recoverable at this day. Co. 2 Inst. 287, 289. 7 H. 6. 35, 36. 3 H. 4. 16.

The Reason why damages were not recoverable at C. Law.

13. Note, that the Reason my Lord Coke gives in 2 Inst. 286. why the Demandant in Real Actions should not recover Damages at Common Law, is because the Demandant never Counted to Damages, which (I conceive) cannot be the Reason, for in some mixt Actions at Common Law, the Demandant never Counted to Damages, as in Assise, Writs of Entry, in nature of Assise, and in Attaint, and yet Damages were recoverable in those Actions, at Common Law; and in a Warrantia Chartæ the Demandant Counts to Damages, and yet shall recover no Damages where the Judgment is only pro loco & tempore i. e. where no Land is lost. 40 E. 3. 7 Hob. Rep. Osbornes Case.

In *Warrantia Chartæ* Counts to damages, yet recovers none.

The Writ of Inquiry of Damages is thus—

The Writ of Inquiry of Damages.

Rex, &c. Vic' ſalutem Præcipimus tibi quod per ſacram' probor' & legal' hominu' de Com' tu' diligentr' inquir' quantum unum Meſs' &c. cum pertinen' in C. de quibus T. injuſte & ſine judico diſſeiſivit W. infra &c. Et qu' idem W. in Cur' noſtra coram Juſtic' noſtr' apud *Weſtminſter'* recuperavit verſus eum per defalt' valent per an' in omnibus Exitibus, juxta verum Valor' eorund' & quantum tempus elabitur a tempore diſſeiſin' prædict', Et ulter' quæ damn' idem W. ſuſtinuit occaſione diſſeiſin' ill' & inquiſic' quam inde fecer' Scire fac' Juſtic' noſtr' apud *Weſtminſt'* a die, &c. ſub ſigill' tuo & ſigill' eorum per quorum ſacrament' inquiſic' ill' fecer', Et habeas ibi nomina eorum per quorum ſacrament' inquiſ' ill' fecer', Et hoc Bre' Teſt', &c. *Raſt. Entr.* 278. *b.*

I conceive it not impertinent to say something in relation to the Falsifying of a Recovery, to shew how a Judgment obtained in a Real Action may be avoided by Plea, without a Writ of Error, or Attaint, and the having thereof, is not only useful in Real Actions, but Contains much in it of the Reason of the Law in other Cases, and wish that I shall Conclude this First Book.

CAP. XXIV.

Of Falsifying a Recovery.

Recoveries may be Falsified.

1. THough Judgments once had, are in Law as sacred whilst they are in force, and bind the Right not only of Parties and Privies, but also of all Strangers whose Titles are meaner than the Title of the Demandant and the judgment, yet if they are obtain'd by Fraud or Covin or other illegal way, and not warranted by the Rules of Law, in many Cases they may be Avoided and Falsified by Plea, if they be pleaded against him that has Right.

2. They

2. They may be Falsified several ways. 1. By Entry and Plea; 2. By Action, 3. By Action and Plea, 4. By Plea only. How many ways they may be Falsified.

1. By Entry and Plea, when the Parties Entry is not taken away by the Recovery, and he brings an Assise, and the Recovery is pleaded against him; then he pleads matter to avoid the Recovery, as if one be Dusted by Covin between the Demandant and him that Dusts the Tenant, and then the Demandant brings an Action against him who Dusted the Tenant; the Tenant may have an Assise, and if this Recovery be pleaded against him, he may avoid it for the reason aforesaid. 41. Ass Pl. 28. Br. Fauxif. Recovery. 40. So if a Woman that has Title of Dower, procure another to Enter, and recover against him, this may be Falsified in an Assise. 44 Ass. 29. Br. ibidem 43. So Tenant per Stat. Merchant, Staple, Elegit may falsifie for Covin in an Assise, 21 E. 3. 1. Br. Fauxf. Recovery 48. 1. by Entry & Plea.

2. By Action and Plea; and that is, when the Entry of the Party that has Right is taken away by the Recovery, and upon a real Action brought, this Recovery is pleaded in barr of his Right; this may be Falsified by Plea; as at Common Law, if a Recovery were had against Tenant for Life, he in Reversion could not (nor yet can save in Common Recoveries) Falsifie by Entry as to have a Common Assise, but must Falsifie by Plea in an Ad terminum qui præteriit or Writ of Right 24 H. 8. Br. 44. So if before the Statute of Uses the Cestury que use in Tail had suffered a Recovery against him by feint Title, the Trustees should Falsifie by way of Action, and not in an Assise by way of Entry 31 H. 8. Br. Faux Recovery 49. So the issue in Tail may falsifie in a Formedon 7 H. 4. 17. Br. Faux Recovery. 10. 2. By Action and Plea.

3. By Action, as in a Quod ei deforceat, by particular Tenants, and deceit for want of Summons, &c. But these are not intended in this place, being particular Actions of themselves Treated of hereafter. 3. By Action.

4. By Plea only, as when the Action is brought against the Tenant upon a Recovery, or a Recovery is pleaded in the Demandants Replication against him, then may the Tenant Falsifie it, if he have Cause. As in a Scire fac against the 4. By Plea only.

the

the Ter-tenant upon a Recovery against B. the Ter-tenant may falsifie the Recovery for good Cause, 12 E. 4. 2. Br. Faux Recovery 31. So in Trespass, the Defendant pleads in bar, and the Plaintiff in his Replication pleads a Recovery, the Defendant by rejoynder may falsifie. Vid. 12 E. 4. 14. & 19. 13 E. 4. 1. Br. Faux Recovery 30.

Several causes of Falsifying. 1. By Covin.

3. There are several Causes and grounds for the falsifying a Recovery. 1. For Covin, Br. Faux Recovery 1. 3. 6. 27. 46. 2. An elder Title of Entry than the Tenant had against whom the Recovery was obtain'd, and upon whom the Entry was made, Br. Faux Recovery 2. 3. Want of jurisdiction in the Court where judgment is given, Br. 9. 38. 4. Warranty and Assets, Br. 18. 5. By reason of a Release, Br. 21. 6. Faint pleader in the Action wherein the Recovery is had, Br. 22. 49. 7. No Tenant of Freehold at the time of the Recovery Br. Faux Recovery 30. 32. 37. 8. Want of an Estate in the Tenant, as being but Tenant for Life. Br. 44.

1. For Covin.

1. For the first as to Covin, as when he who has an Advowson, and grants the next avoidance, and afterwards to Covin to destroy the Grantees interest, he suffers a Recovery by Writ of Right of Advowson against him, 26 H. 8. 2. So if one pleads a Recovery against himself by Assise puis le darreine Continuance, the Demandant may say, that this Recovery was of Covin, and must shew how, i. e. That the Tenant did not disseise the Tenant in the Assise 9 H. 6. 41. So if the Entry of one that has right to Lands be taken away, and he of Covin gets another to Enter, and recovers against him, this may be falsified for Covin, though the Party that recover'd had a good Title, and he who was ousted may either Enter, or bring an Assise: And where a Woman has Title of Dower, and gets another to Enter, and then recovers against him that Entred, this may be Falsified for the Covin, 9 H. 6. 41. and other Cases there are of the like nature, 7 H. 4. 19. 5 H. 7. 40.

2. An elder Title of Entry.

2. As to the Second ground of Falsifying. If A. brings a Præcipe quod reddat against C. and Recover against him, and hanging the Præcipe quod reddat L. Enters, and A. brings a Scire fac' against him, and in Plea to the Scire fac', he makes a Title, and says that he was seis'd till C. disseised

disseised him against whom the Recovery was had, this is good to falsifie the Recovery [illegible] the Title to the Tenant [illegible] Recovery was given after [illegible] 3 H. 6. 34.

3. As to the third, All Grant & Alienations [illegible] Want of Juriſdiction.
after Recovery in Bank Court [illegible] other party may falsifie this, [illegible] (Fee-simple) by virtue of a Fine [illegible] &c. 7 H. 4. 3. The like for 39 [illegible] 6.

4. The Fourth ground as to Warranty & Assets: 4. Warranty & Assets.
If a Tenant in Tail [illegible] Recovery, and [illegible] then is deceased [illegible] the [illegible] to Enter and [illegible] falsifie this Recovery by the Common Law; and if in this Case there be Assets, as [illegible] and Heirs to avoid this Recovery 27 Assiz. pl. 74.

5. A Release: 5. A Release [illegible] Tail, a Recovery [illegible] to Execute a Fine, [illegible] between the Fine and the Execution; the Issue may falsifie the Judgment in Execution [illegible] Issue upon the Recovery [illegible] for Life, and that the Warranty [illegible] his Right to the Tenements [illegible] Execution, and so the Execution falls in Law, 29 Assiz. pl. 1. Br. Faux. de Recovery 21.

6. The Sixth ground in Case of false Verdict, as if Gerbury [illegible] was taking the [illegible] point upon a Feoffment [illegible] &c. Br. Faux Recovery 49. [illegible] ranty and does not plead it against the Party pursuing who Recovers. 30 Assiz. pl. 10. 6. False pleading.

7. Where may Falsifie in the Point tried. 7. Where may falsifie in the Point tried; or if a Man sue a Writ [illegible] Right, [illegible] by false Oath, the Writ [illegible] to the other Man; and therefore the Point may falsifie in the Point tried, per Forclus. 32 H. 6. 38. and 26 H. 6. 18.

7. No Tenant to the Precipe.

7ly. [illegible] Tenant [illegible] has no Estate of [illegible] Use if a Stranger by Right or Wrong be possessed [illegible] a Condition, &c. it may be that [illegible] is no Tenant, nor at the time of the Writ brought, the Tenant has not Estate of the Freehold, nor at any time after, 12 E. 4. 14. 19 H. 4. 1. Vid. 22 E. 4. 24. Nova non dat Actionem. If the Recovery was [illegible] but may be [illegible] Nor where Remainder [illegible] like (as 19 Ass. pl. 2.) the [illegible] not Tenant of the Estate Tail at the time of the Recovery, Kelw. Rep. 136. b. Fl. Com. *Mawrill's* Case 8.

8. Want of Estate in the Tenant.

8ly. So in the last Ground where the Tenant has but a particular Estate, he in Reversion may falsifie it in another Action; As if a Recovery be against Tenant for Life, he in Reversion may falsifie it ad terminum qui præteriit; but if Tenant for Life pray Aid of a Reversion, he in Reversion may enter before Judgment, but after Judgment he cannot enter, but must falsifie, as before, Br. Jours. Rec. 44. The Statute of 14 Eliz. c. 8. which makes Recoveries bind by all against Tenant for Life without Voucher, Recoveries by Fine of Lands, i. e. [illegible]

Termors for years may falsifie, & Tenant *per* Stat. Merch. *per Stat.* 21 H. 8. c. 15.

4. Vid. Stat. of 21 H. 8. c. 15. How Termors for years, &c. ought by Stat. Merchant, Staple, Elegit, shall falsifie feigned Recoveries by them in Reversion, &c. Co. Lit. 104. b. Co. Lit. 46.

Rules of falsifying Recoveries.

1. Not to falsifie in point tried by Privies.

5. Observe these Rules as to falsifying Recoveries. 1. No Party nor Privy to a Recovery, shall falsifie in the Point tried, by Verdict; as if an Issue be tried against a Tenant in Tail upon the Writ, i. e. (non dedit) he, nor his Issue shall falsifie in that Point, but must plead an Attaint, otherwise the Recovery were by Default, or [illegible] upon a Collateral Point, and not upon the Title, 34 H. 6. 1. 19 H. 6. 39.

2. Where may falsifie in the point tried.

2ly. Where a Man cannot have an Attaint, he may in some Cases falsifie in the Point tried; as if a Man seis'd in Burrough English, lose by false Oath, the Attaint belongs to the Eldest Son; and therefore the younger may falsifie in the Point tried, per Forteſcue. 22 H. 6. 28. and 26 H. 6. 18.

3ly. A

3ly. A Stranger may falsifie a Recovery in the Point tried, or by any other matter which proves the Recovery void, or the Title of the Demandant to be void; as in Assise, if a Recovery be pleaded against N. and Plaintiff's Possession mean between the Title and the Writ brought; this Recovery may be falsified by alledging a Release, which the Tenant to the Recovery might have pleaded, or he may plead, that the Tenant died hanging the Writ, or that the Tenant had nothing in the Land hanging the Writ, &c. 36 H. 6. 32. 9 H. 6. 41. Br. Faux. Rec. 3. 15. But it's said, A Stranger cannot falsifie in Dilatories; as to say, a Feme Demandant took Husband pending the Writ, Br. 15. 36 H. 6. 32. Nor that the Action was discontinued, nor to alledge any Error in the Record, 21 E. 4. 23. Br. 34.

3. Stranger may falsifie in the point tried.

4ly. None can falsifie (though he be a Stranger) without making a title, 36 H. 6. 32.

4. None can falsifie without Title.

5ly. Where a Man loses his advantage of time to falsifie, he shall not falsifie afterwards: As if an Assise be brought against B. and he pleads a Recovery, and the Plaintiff hath Cause to falsifie it, and does not, but pleads another matter which goes against him, and Judgment against him, he cannot falsifie after in another Action, 40 Ass. pl. 4. Br. Faux. Rec. 39.

5. Cannot falsifie out of time.

6ly. He who claims under him who suffers the Recovery, or against whom the Recovery is had, cannot falsifie, though he be a Stranger; as if one purchase of the Tenant, hanging the Writ, and after the Demandant recovers, the Purchaser is bound by the Recovery, and cannot falsifie, 36 H. 6. 32. Br. 15. 14 Ass. pl. 26. Br. 42.

6. He who claims under him who lost, cannot falsifie.

OF PARTICULAR REAL ACTIONS

In General.

LIB. II. CAP. I.

In what Cases to be brought.

1. WHERE a Man had Right or Title to any Lands or Tenements, and the Poſſeſſion thereof was unjuſtly taken or withheld from him that had Right, the Common Law and Statute Law did provide ſeveral Remedies for the Recovery of the Poſſeſſion according to the ſeveral Circumſtances of the Difference of the Caſe; and the ſeveral Remedies had their ſeveral Names and Denominations commonly from the moſt important Point of the Writ, or matter therein mentioned to be redreſſed or complain'd of, as the Writ of Ayel from the Seiſin of the Grandfather; the Mortdanceſter from the death of the Anceſter, though he died not ſeis'd, if he were ſeiſed the day of his death, F. N. B. 486. The Writ of Right, ſo call'd, becauſe the words in the Writ are, Quod ſine dilatione plenum rectum teneas, &c. Co. 1. Inſt. 115. a. and ſo of others.

Denominations from the point of the Writ.

The Kinds.

2. Theſe real Writs do admit of Diviſions and Subdiviſions; ſometimes they are divided in reſpect of the words of the Writs; and ſo they are divided into Præcipe qd' reddats. 2. Præcipe quod faciats for things not in Render, as the Writ de Conſuetudinibus & Servitiis, Secta ad molendinum, Quod permittat. 3. Or, Si fecerit te ſecur', Finch. Law 257.

2ly. They

ally. They are divided in respect of the Person that was last seis'd, into Actions Possessory and Actions Ancestrel.

Possessory are those that are brought when the Demandant himself was seised; as in Assise, Writs of Entry, in nature of an Assise, Writ of Right of a Disseizement to the Demandant, Escheat, Cessavit, Writ of Right sur disclamer, &c. Possessory Actions.

Ancestrel are those that are brought upon the Seisin of the Ancestor, as Mordancester, Ayel, Besayel, Cosinage; And these Actions Ancestrel are again subdivided into Actions Ancestrel possessory, as where the immediate Ancestor was seised, and the Possession descended to the next Heir; and into Ancestrel Droiturel, where nothing but a bare Right descended from the Ancestor; and are likewise sometimes for the meer right, as the Writ of Right, and sometimes grounded upon the Right, as Writs of Right in their nature, some Writs of Entry, as Dum fuit infra ætatem, Non compos mentis, Co. lib. 6. f. 3, 4. Markal's Case. Actions Ancestrel.

3. Regularly, all Præcipe quod Reddats real, are either, 1. Writs of Right, as a Præcipe in capite. 2ly. Writs of Right in their nature. 3ly. Writs of Entry. 4ly. Writs of Seisin of the Grandfather and Great Grandfather, as Ayel and Besayel, or of the Great Grandfather's Father, or of the Brother of the Great Grandfather's Father, call's a Writ of Cozinage. Another Division.

4. The Real writs of Si fecer' te securum, &c. are such as are either of the Demandant's own Seisin; as an Assise de Novel Disseisin: Or, 2ly. of the Seisin of his Ancestor, being his Father, Mother, Brother, Sister, Uncle, Aunt, Nephew or Neece, as an Assise of Mordancester, or any other Ancestor where the Writ is brought by Privies in Blood, as the Nuper obiit. 3ly. A Quo jure, which is a Writ of Right in it's nature. 4ly. Partitione faciend'. 5ly. Juris utrum, Attaint. Division of Writs, *Si fecer' te securum, &c.*

5. The real Præcipe Quod faciats whether they be for things in Feesans or Sufferance, are either to recover Hereditaments not being Land, or some real thing concerning them; Of the first sort are the Writ de Consuetudinibus & Servitiis, Sect. ad Molendinum, Q. Imp'. Quod permittat; Of the second sort are the Curia Claudenda, A Writ of Division of *Præcipe quod fac'.*

Covenant Real to Levy a Fine, a Writ of Mesne, Warrantia cartæ. Under these Divisions lie all, or most of the Considerable Real Writs, some of which likewise are divisible again, under their proper heads, as the Writs of Right, and Writs of Entry, which shall be taken notice of, when we come to those particular Actions.

Real Actions may be brought though the Entry be not taken away.

6. Note for a Rule, That anciently (and at this day) a Man might bring a Real Action, yea, a Writ of Right (if he pleas'd) though his Entry was not taken away. And generally where the Entry is not taken away, the Assise of Novel disseisin was the Common Remedy to recover the Possession, as the Ejection' firm' is at this day. Co. 1 Inst. 278. 6. * Lit. Sect. 478.

Where a man may have election to have several sorts of Actions.

7. In most Cases where a Man may have a Real Præcipe, he may have a Writ of Right, which is the highest real Action; but in some Case, if he do bring a Writ of Right when he may Enter, he loses the Land for ever. As if a Disseisor within age alien, and the alienee die seis'd, and his Heir Enter, and the disseisee release his Right to the Heir of the alienee, in this Case the disseisor has a right to the Possession, because he alienes under age, and therefor may Enter, but if he bring a Writ of Right against the Heir of the alienee, he loses the Land, because the Heir of the alienee has the more ancient right in him by the Release, but if he had Entred, the Heir of the alienee should not have recovered in a Writ of Right, against him, because a bare right in such Case shall not be left in the Heir of the alienee, but shall ever follow the Possession. Co. 2 Inst. 279. e. f. 266. a. *

CAP.

CAP. II.

Of a Writ of Right in general.

Writ of Right, what.

1. A Writ of Right, (properly so called) is a Writ brought by him who has the full and meer right of property to the Land in him, to recover the Writ of Possession, which he cannot be restor'd unto without a judgment first had for him in the King's Court, or some Court Baron. Bract. lib. 5. tract. 1. c. 1.

Wherein different from others.

2. And though this Definition may be applied to many other Actions where the Entry of the Defendant is taken away, yet this Writ differs from all others. 1. In the Frame of it. 2. In the use of it. 3. In the Process and Proceedings. 4. In the End of it.

In the Frame of it.

1. First for the Frame of it, it is always directed to the Lord of whom the Land is holden, to do right to the Demandant in his Court, and remains with the Demandant, Except where the Lord remits his Court to the King, or has no Court, there the Writ is directed to the Sheriff, or in the Case of the King, where the Land is holden of him, as of some Honour, Castle, Mannor, or in Capite, as of his Crown; in the first Case, the Writ is directed to his Bailiffs, and in the other to the Sheriff, which is called a Præcipe in Capite, F. N. B. 9. Register original 1. 2, 3. 4. Where it is directed to the Lord or King's Bayliffs, there are these words always in the Writ, Præcipimus tibi quod sine dilacoe rectum teneas *W. B.* de un' Mess. &c. ——

In the Use of it.

2. For the use of it in some Cases, no other Writ can be had but a Writ of Right for recovering of the Possession; as in all or most Cases where a Man loses Land by default in a Præcipe quod reddat: But in 11. Ass. 17. Br. Droit de Recto. 23. after a Recovery against an Heir by default, where his Ancestor died Seis'd, the Heir brought a Mord'ancestr and good. Quære, whether there be any other Case.

2. Where

2. Where the Tenant loſes in a Præcipe quod reddat, by Action tried. 3. Where the Demandant is barr'd in any other Real Action (though it be but by action tried) he ſhall have a Writ of Right, as his ultimum refugiu'. 4. If a Man loſe by default in a Writ of Right before the Miſe joined, he may have a Writ of Right againſt him that recover'd. F. N. B. ibidem. 5. I conceive its then proper for this Action, when the ſeiſin of the Anceſtor is not within the time of limitation preſcribed to other Actions.

In Proceſs and Proceedings. 3. It differs from other Original real Writs in the Proceſs and Proceedings, of which more hereafter.

In the End. 4. In the End of it, for it is Obtained to be the utmoſt Remedy that any Man may have in Civil Actions for the Recovery of Poſſeſſions, that there may be an end of Suits; for the Judgment is commonly Final, and as Fleta ſays, Lib. 6. c. 1. Actio quidem ſuper Recto ultimum locu' ſibi vendicat in ordine placitoru' a ſummo Remedio ad inferiorem Actionem, non habetur ingreſſus neq' auxilium.

Kinds of Writs of Right. 3. Writs of Right are of ſeveral ſorts——As the Writ of Right Patent, Writs of Right Cloſe, and Writ of Right of London, which are the Proper Writs of Right, and Writs which are Writs of Right in their own nature.

Writs of Right proper and in their nature are.

1. Writ of Right Patent.
2. *De Recto quando Dominus remiſit Cur'*, is Cloſe.
3. *Præcipe in Capite*, is a Writ of Right Cloſe.
4. The little Writ of Right Cloſe in Antient Demeſne.
5. A Writ of Right of Dower is Patent.
6. A Writ of Right of *London*.
7. Writ of Right *de Rationabili parte*.
8. *Ne injuſte vexes*, is a Writ of Right Patent in it's nature.
9. A Writ of Right of Advowſon.
10. A *Nativo Habendo* in its nature, a Writ of Right.
11. *Quo jure*, in its nature a Writ of Right.

12. *De*

Writs of Right proper, and in their nature are.

12. *De Rationabilibus divisis*, in its nature is a Writ of Right. 5 E. 4. 6. b.
13. A Writ of Right, *de Custodia Terr' & hæred'*.
14. *De Consuetudinibus & servitiis*, a Writ of Right in its nature.
15. A Writ of Right *sur Disclaimer*.
16. All *Formedons* are Writs of Right in their nature. *Co. lib.* 6. 7. c. 18.
17. *Cessavit*, a Writ of Right in its nature.
18. A Writ of Dower *unde nihil habet*, in its nature, a Writ of Right.

CAP. III.

A Writ of Right Patent.

To whom the Writ is to be directed.

What.

1. THere are several sorts of Writs of Right Patent, as First, the general Writ of Right Patent directed to the Bayliffs of the King when the Land is holden of him as of some Mannor, &c. or to the Lord of whom the Land is holden, and this is the highest Writ of Right Patent. F. N. B. 1, 2. 2. The Writ of Right in London. 3. The Writ of Right of Dower. 4. The Writ of Right de Rationabili parte. 5. The ne injuste vexes. Reg. 1, 2, 3, 4.

The Writ.

Droit droit.

2. The general Writ of Right, chiefly intended to be Treated of in this Chapter is called in Books (Droit droit) because it hath the greatest respect, and the most assured judgment. And this is not to be understood strictly of a Writ of Right Patent only, but likewise of such Writs of Right as are of the same nature, and do as it were flow from it, as the Writ of Right Quia Dominus remisit Curiam, which is Close, and is nothing but the Writ of Right Patent brought in the King's Court, and then it is always Close, and directed to the Sheriff; and the Writ called the Præcipe in Capite, which is as high a Writ of Right as any, and is where the Land is holden of the King

as of his Tenure, and not as of any Manor or Honours, &c. and this is always Close and directed to the Sheriff. Register Brev. 4. b. F. N. B. 11.

Writs of Right in their nature, why so called.

3. All other Writs of Right, are Writs of Right in their nature only; and I conceive they are called Writs of Right in their nature, partly for distinction sake to, to difference them from the proper Writ of Right for Lands in Fee simple, and partly because in most of their Process and Proceedings they agree with the Writ of Right, but not in all, and that the Estate thereby Demanded, and to be Recovered, is not always the nier Right, i. e. the Fée simple; as the Writ of Right of Dower, Formedon in Descender, Remainder; and some of them are not for Lands, but some particular Hereditaments, as the Writ of Right of Advowson, Writ of Right of Ward, De consuetudinibus & servitiis, and the like.

To whom the Writ is to be directed.

4. Where the Lands are holden of a Common Person, the Original Writ of Righ Patent is always directed to the Lord of the Manor, if he be in England, otherwise to his Bayliff; but the Writ is always to remain with the Demandant himself, so doth no other Original.

The Original is thus——

The Writ.

Carolus, &c. *T. M.* salutem Præcipimus tibi quod sine dilatione plenum rectum teneas *T. B.* de un' Mess. decem acr' terr', &c. cum pertin' in *B.* quod clamat tenere de te per servitium unius denar' per annum pro omni servitio qu' *J. S.* ei deforceat Et nisi fecerit Vic' *C.* faciat ne amplius clamorem inde audiamus pro defectu recti. *T.* meipso apud Westmonaster. Registr. f. 1. a.

How the Writ is to be delivered.

5. The Original thus sued forth, it ought to be brought to the Steward of the Court of the Manor, of which the Land is holden, and there delivered in Court to him; upon which after he hath given Pledges to prosecute, and the Steward hath made an Entry of the Demand by the Writ, he ought to deliver the Writ again to the Demandant.

The

The Entry of the Writ at the Court Baron is thus——

Cur' *D.* Mil' Maner' ſu' de *S.* tent' ibid' coram *J. S.* Seneſchal' vel *J. B. J. I.* Ballivis ipſius *D.* ac *J. N.* & *L. T.* &c. Sectator' Cur' ill' die anno Regni Dom', &c.

Ad hanc Cur' ven' *J. M.* in propria perſona ſua deferendo ſecum Breve Domini Regis de recto patens qu' ſequitur in hæc verba, Rex, &c. Et per' quod plenum rectum eid' *J. M.* ſecundum exigentiam prædict' brevis verſus prædict' *J. L.* de Maner' & Tenement' prædict' teneatur Et inven' pleg' de proſequiend' breve prædict' verſus ipſum *J. L.* videlt' *A.* & *B.* &c. & præcept' eſt *J. S.* Ball' quod prædict' *J. L.* ſum' eſſend' ad prox' Cur', &c. ibidem tenend' ad reſpond' eid' *J. M.* de placito quod reddat ei Maner' & Tenement' prædict. cum pertin' qu' idem *J. M.* clam' eſſe jus ſuum verſus eund' *J. L.* per breve prædict. Raſt. Entr. 244. b. Record en Court Baron.

6. If the Bailiff or Steward delay the Demandant, and will not ſend out Proceſs, then the Demandant may remove the Plea into the County Court by a Precept called a Tolt, and then the Entry in the Court Baron is further thus—— Tolt.

Et quia prædict' Ballivi favent prædict' *J. L.* verſus eundem *J. M.* Ideo ſum' prædict' præfat' *J. M.* nondum conceditur faciend' ſed dies dat' eſt eid' *J. M.* ad prox' Cur', &c. hic ſcilicet die Martis prox', &c. tenend', &c. Ad quem diem coram præfat' Ball' & Sectator' Cur' prædict' ven' hic prædict. *J. M.* in propria perſona ſua Et Vic' Com. *C.* per Ballivum Domini Regis & ſuum virtute cujuſdam præcept' ipſius Vic' ad querimoniam præd. *J. M.* aſſerentis ill. in loquela præd. plenum rectum in hac Cur' non teneţur eid' Ballivo facti in Cur' hic oſtens' tul' ſibi loquel' præd' in Com' ſu' *N.* deducend', &c. Record of the Tolt.

The Tolt is thus——

R. W. Vic' *N. Edvardo C.* Ballivo Domini Regis & ſuo in Com' præd' itineranti ſalutem quia ex querela *J. M.* ad Com' meum ſcilicet die, &c. anno, &c. apud *B.* ibm. tent'. perſonaliter accedente accepi quod licet ipſe breve Domini Regis de Recto patens Ballivo dict' Domini Regis Ducatus ſu' *L.* de *F.* in dicto Com' meo direct' de eo quod ipſi plenum rectum tenerent The Writ called the Tolt.

dicto *J. W.* de Maner' de *F.* cum pertin' & de xl. acris terr' cum pertin' in *F.* qu' *J. S.* ei deforc' deduliſſet *J. B.* & *J. C.* Ballivis ſu' Ducatus præd' de *F.* præd' tamen pro eo quod dict' Ballivi favent dictum I. S. in ea parte & plenum rectum ſecund' Exigentiam ejuſdem bris' hucuſque diſtuler' facer', tibi ex parte Domini Regis præcipio firmiter injungens quod in propria perſona tua acced' ad Cur' Domini Regis Ducatus ſui prædict' de F. Et loquela qu' eſt ibidem inter præfat' I. W. & I. S. per dictum bre' de Recto in Com' meum prox' tenend' tollas. Et ſum' per bon' ſum' prædict' I. S. quod ſit ad Com' meum N. ſcilicet die, &c. apud N. in le Shirehouſe tenend' præfat' I. W. inde reſponſur' Et habeas ibi loquelam prædict' ſum' & hoc præcept', dat' in Com' meo apud N. in le Shirehouſe die, &c. Anno ſupradicto' *Raſt.* 244.

Return of the Tolt.

Then the Return of the Tolt is made upon the back of the Tolt Virtute iſtius præcept' die Anno acceſſi in propria perſona mea ad Cur' infraſcript' apud B. tent', &c. Vid. Raſt. Entr. 244. b.

Pone.

7. **Upon the Return of the Plea into the County Court, the Demandant may remove the ſame out of the County, into the** Common Pleas, **by a Writ called a** Pone, **without any Cauſe ſhew'd in the Writ, but if the Tenant remove it, he muſt ſhew ſome Cauſe in the** Pone. F. N. B. 9 Raſt. Entr. 245. a. **But there are other Cauſes for which the Tenant may remove the Plea out of the Lord's Court, or the County Court into the** Common Pleas. Vid. F. N. B. 10. b.

The Pone is as followeth——

Writ of *Pone.*

Rex, &ce. Pone ad petitionem I. M. coram Juſticiar' noſtris apud Weſtm' loquelam quæ eſt in Com' tuo per bre' noſtrum de Recto, inter I. M. petentem, & I. L. Tenentem de Maner' de F. cum pertinen' in D, & ſum' per bon' ſum' prædict' I. L. quod tunc ſit ibidem præfat' I. M. inde reſponſur', Et habeas ibi ſum', & hoc bre', &c. Raſt. Entr. 245. a.

8. We

8. We have brought the Writ of Right out of the Lord's Court into the County, and from thence into the Common Pleas, by the Demandant by a Pone; which (as is said) is the only proper way for the Demandant, but the Tenant he may remove it by a Recordar' into the Common Pleas immediately with Cause shew'd. Vid. F. N. B. The Form of the Recordar'. *Recordari.*

9. But without all this Circuity the Demandant may if he please, have his Writ of Right immediately returnable into the Common Pleas, which is most safe and usual. And in this Case after the Teste, there must be these words in the Writ, viz. Quia I. T. Dominus feodi ill' nobis inde remisit Cur' suam, and if these words be in, its not material whether the Lord gives Licence or not, but if they be not in, it is sufficient if the Lord send his Licence to the King in the Chancery afterwards. F. N. B. 5. a. And this Writ of Right is called, Quia Dominus remisit Cur', and is Close directed to the Sheriff. *Quia Dominus remisit Cur'* *Letter of Licence.*

The Form of the Letter of Licence from the Lord, vid. Rastall, 246. a.

The Original Writ of Right, Quia Dominus, &c. is thus:

Elizabetha Dei gratia Angliæ Franciæ & Hiberniæ Regina, Fidei defens', &c. Vic' Cestr' salutem, Præcipe Thom' Grimsditch, quod juste & sine dilacoe' reddat Rado' Johnson, unam Salinam octo plumbor' cum pertinen' in Northwico, qu' clam' esse jus & hæreditatem suam, Et unde quer' q'd' prædict' Thomas ei injuste deforceat. Et nisi fecerit & præd' Radus' facer' te secur' de clamore suo, pros' tunc sum' prædict' Thomam quod sit coram Justiciar' nostris Cestr', apud Cestriam pr' die prox' Sessionis Com' Cestr' apud Cestr', tenend' ostensur' quare non fecerit, & habeas ibi sum' & hoc bre' Teste meipsa apud Cestr' secundo die Augusti Anno Regni nostri octavo. Quia Edrus' Comes Derby capital' Dominus feodi ill' nobis inde remisit Cur' suam. Inter alia brie' Cestr' 8. Eliz. **The Writ of *Quia Dominus remisit, &c.***

Returned thus.——

Pleg' de pros. { Herie' Doe. / Petrus Poe. } Sum' { Ricus Roe. / David Doe. }

Hugo Cholmondeley, Milit. Vic' Ceſtr'.

10. After the ſuing out of the Original, the next thing to be done is to get the Tenant ſummon'd, and there ought to be 15 days at the leaſt between the Teſte and the Return of the Original.

15 Days Writ of Summons.

11. The manner of the Summons is as in other real Actions upon the Land, for which vid. Summons antea. f. 3.

Manner of Summons.

12. Upon Summons return'd, if the Tenant do not appear at the day of appearance, which at Weſtminſter is the 4th day after the Return of the Writ, but in Cheſter, the very Return of the Writ, the Demandant may have a Grand Cape, upon the Return of which, if the Tenant do not appear and plead ſomething to Excuſe his default, the Land is loſt. Vid. Saver default, fol. 29. Vid. Grand Cape. f. 26.

When is the day of appearance at *Weſtm.* when at *Cheſter.* *Grand Cape.*

13. The Fourth day after the Return, the Tenant may Eſſoine, and this at Weſtminſter delays the Demandant ſeveral weeks, as if the Eſſoine be caſt Tres Michael' it ſhall be adjourn'd by the Demandant 15 days, at leaſt to Craſtin' Anim' which is from the 20th of October, to the 3d of November, and ſo of other days according as the Eſſoine is Caſt. Note, that the Demandant muſt adjourn the Eſſoine, otherwiſe he may be Nonſuited, if the Tenant Enter a ne Recipiatur with the Clerk of the Eſſoines. But the Eſſoine in Cheſter is but de die in diem.

Eſſoine.

Eſſoine to be adjourn'd.

14. At the day given by the Eſſoine, if the Tenant do not appear, judgment ſhall be given without a Grand Cape. Vid. ante p. 24 Raſt. Entr. 146. b.

Where Judgmt. ſhall be given without a Gr. Cape.

15. If the Tenant appear after the Count, he may demand the View, and that delays the Demandant Nine returns

turns more, i. e. if he appear Craſtin' Anim' the 3d of November, then the Writ of View is returnable Quindena Paſche, in Eaſter Term, which is ſometimes ſix months and upwards. Vid. Stat. 17 Car. c. 16. Co. 2 Inſt. 567. Dyer 252. 9 E. 4. 18.

View when to be demanded.

16. And View may be demanded either before or after an Imparlance. Raſt. Entr. 376. a. Vid. antea f. 44.

The Writ of View in a Writ of Right.

Rex, &c. Vic' C. ſalutem, Præcipimus tibi quod ſine dilacon' haber' fac' viſu' de un' Meſs', &c. in B. qu' W. in Cur' noſtra coram Juſtic' noſtris apud Weſtm'. clam' ut jus ſuum verſus eum per bre' noſtr' de Rect' rect' Et dic' &c. ut antea f. 44.

Writ of View.

For the Return, Vid. f. 46.

17. Upon Return of the Writ of View, the Tenant may be eſſoin'd again, and that delays the Demandant 15 days more at leaſt. But Q. whether the Eſſoine ſhall not be adjourn'd nine Returns, as if the Writ of View be returnable Quindena Paſche in Eaſter Term, and an Eſſoine then Caſt whether they ought not to be given to Tres Trinitatis, which is ſome Eight or Nine weeks by the Statute of 16 Car. c. 6.

Tenant may be eſſoin'd upon return of the Writ of View.

18. At the day given by the Eſſoine after View, the Tenant ought to appear, and then he may Imparle, and day may be given to any Common Return day, or any other day in Term as the Court ſhall think fit, for theſe days are but days Ex gra' Cur' Vid. jour in Court. 52. 8 E. 4. 4.

Imparlance after Eſſoine.

19. And now we have brought the Tenant to an Appearance when the Demandant has regularly proſecuted his Action, but if the Demandant have in any thing miſtaken his proceedings, or hath not done in his Proceſs what by Law he ought, he thereby gives the Tenant an Advantage to delay him much more, and it may be during his life, though he may proſecute his Action ſeveral years. And in ſuch Caſe, the other learning of Saver defaut, non Tenure, Several Tenancy, Joynt-tenancy, &c. comes to be of uſe, which ſee before. p. 29. 34. 37. 41.

Demandant may be delay'd by his own miſmanagement.

20. After

Count. 20. After the Tenant hath appear'd, the Demandant Counts against him, which is commonly delivered to the Tenants Attorney between the time of demanding the View, and the return of the Writ of View.

Count in a Writ of Right.

Salop. ff. Record. R. C. per I. B. Attornatum ſuum pet' verſus I. S. Maner' de T. cum pertinen' ac Advoc' Eccleſiæ de C. cum pertinen' ac' du' Meſs', &c. in M. P. D. & E. ut jus & hæreditat' ſu' per bre' Domini Regis de Recto quia Capital' Dominus feod' ill' remiſit inde Cur' ſu' Regi, &c. Et unde dic' quod ipſimet fuer' ſeiſit' de Maner' Advoc' tenement', & reddit' prædict' cum pertinen' in dominico ſuo ut de feodo & jure & de Advoc' prædict' cum pertinen', ut de feodo & jure tempore pacis, tempore Domini Regis, nunc Capiendo inde Expleſ. ad Valenc', &c. Et quod tal' ſit jus ſu' offerunt, &c. Raſt. Entr. 246. a. b.

note vulg. 112

This is a Count where the Demandant himſelf was ſeiſ'd, if it be of the ſeiſin of his Anceſter, the Count muſt be ſet forth, who, and in what King's time, Vid. Raſt. Entr. 194. b.

21. After the Count (as is before ſaid) the Tenant may demand the View, and after View Imparle.

Voucher, Aid. 22. After the View and Imparlance, the Tenant may Plead or Vouch, or pray in Aid if he be Tenant for life. For Voucher, Vid. antea. Aid Praier, antea. Vid. Co. Entr. 1824. b.

The Entry of the defence in a Writ of Right. 23. The defence in this Action is different from all others; for whereas in other Præcipe quod reddat's, the Tenant defends his own Right by ſaying, Ven' & defend' jus ſuum quando, &c. in this he defends the right and ſeiſin of the Demandant, ſaying, Et prædict' T. ven' & defend' jus præd' S. & ſeiſinam ejus, &c. & vorum, &c. ut de feodo & jure, & maxime de Tenement' prædict' cum pertinen',—— Co. Entr. 182. a. b. Quær. the reaſon of this, and the Form of the Replication ſeems as ſtrange, the Demandant ſaying that the Tenant unjuſtly defends the right of the Demandant thus,

defend is deny

But upon a Confeſſion, the Tenant defends his own Right. Roſs. Entr.

thus, ——Et præd' S. dic' quod præd' T. injuste defend' jus ipsius S. & lesinam ejus, &c. Et totum, &c. ut de feodo & jure & maxime de Tenement' præd' cum pertinen', &c. Quia dic', and then recites the Count again according to 21 H. 6. 26. a. Co. Entr. 182. a.

23. There are three sorts of Trial in this Action. 1. By the Grand Assise. 2ly. By Battle. 3ly. By a Common Jury of 12 upon a Collateral point. 3. Kinds of Trial in a Writ of Right.

1. The Grand Assise is a Jury of 12, joined to four Knights, and chosen by them to Try the mere right between the Demandant and the Tenant, upon whom the Tenant hath put himself by pleading: And this is called joining the (Mise) upon the mere Right, which in other Actions is called (joining issue.) Lit. Sect. 514. Co. Lit. 294. b. 1. Gr. Assise.

Note, that the Tenant in Law, i. e. the Vouchee or Praise in Aid may put themselves upon the Grand Assise, Co. Entr. 181. b. 182. a. b.

It's called the (mere Right) merum jus, because the Right of Property to the Land is only Tried and put to issue, without respect to the right of Possession, for it is possible that the Demandant or Tenant may come unlawfully to the Possession, and yet have good right to the Land, and the Grand Assise shall find for them accordingly, as you may see Lit. Sect. 478. As the Case where an Infant disseisor alieneth in Fee, and the Alienee dieth seis'd, and his Heir Enter, the disseisor being within Age, if the Disseisee release his Right to the Heir of the Alienee, and then the Disseisor bring a Writ of Right, and the (Mise) be joined upon the mere Right, the Grand Assise ought to find for the Tenant, for that the Tenant hath the right of the Disseisee, which is the antient Right, though the Possession of the Tenant was not lawful, neither before nor after the Release; but the Disseisor might have Entred upon the Heir of the Alienee, because he was under Age at the time of the discent, and Consequently might have had an Eject' Firm'. Vid. Co. 1 Inst. 279. a. Mere Right, why so called.

23. The manner of the Tenant's putting himself upon the Grand Assise is thus:——Et præd' E. ven' & defend' jus The pleading to the Grand Assise.

The pleading to the Grand Assise.

jus ipsius W. (the Demandant) Et seisina' su' quando, &c. Et totum &c. Et quicquod, &c. Et maxime de Tenement' præd' cum pertinen', ut de feodo & jure, &c. Et pon' se in magnam Assisam Domini Regis, Et pet' Recognic' fieri utrum ipse majus jus habeat tenend' Tenement' præd' cum pertinen' sibi, & hæred' suis ut Tenen' inde sicut ill' ten' an præd' W. habend' eadem Tenement' cum pertinen', ut ill' superius pet', &c.

Miſe join'd in a Writ of Right without any Replication.

Note, that upon the Tenants thus putting himself upon the Grand Assise, the (Mise) is joined without any Replication by the Demandant, and Process is awarded as hereafter is shew'd. Co. Entr. 181. But yet the Demandant may if he will Imparle before the Process be awarded, and if the Tenant do not appear at the day given by the Imparlance in the same Term, this is a Departure in Despite of the Court, and judgment shall be given against the Tenant without a Petit Cape, Rast. Entr. 247. Vid. antea Departure in Despite, &c. f. 74. Vid. Dyer 98. Pl. 51.

Sum' ad eligend' 4 Milites.

24. When the (Mise) is join'd and Process awarded, first the Demandant is to sue out a Writ of Summons to warn Four Knights to appear, to chuse the Grand Assise, and this is a judicial Writ in the Register. f. 51. And is thus.——Vid. Dyer 103.

Writ of Summons *ad elegend' 4 Milites.*

Rex, &c. Vic' C. salutem Præcipimus tibi quod sum' quatuor legales Milites de Com' tuo quod sint, &c. ad Eligend' super Sacrament' suum duodecim de sen' & aliis legalibus militibus de Vicin' de S. qui melius sciant & velint dicere veritatem ad faciend' Recognic' magn' Assise nostre inter A. peten' & B. tenent' de un' Mes. &c. qu' idem A. in Cur' nostra, &c. clam', &c. versus eum, Et unde idem B. in eadem Cur' nostra posuit se in magnam Assisam nostram, Et petiit Recognic' fier' utrum ipse majus jus habeat tenend' Mes', &c. præd' sicut ill' tenet an præd' A. habend' ill' sicut ill' petit, &c. Et habeas ibi noia' quatuor Milit', Et hoc bre' Teste, &c. Vid. Lit. Sect. 514.

Rast. Entr. 103. a.

If there be not Four Knights in the County, the Sheriff may return others.

25. At the Return of Twelve Knights by the Four, if they

shall be awarded to the Sheriff to cause them to appear at such a day. Dyer 270. b. Vid. Co. Entr. 181. Leon 1. p. 303.

Venire fac. to cause the Jury return'd by the 4 Mil' to appear.

26. There must be 16 Jurors of necessity to make the Grand Assise, i. e. 12. together with the four Knights, Dyer 98. Leon 1. p. 303. though the Writ be directed to the four Knights to ad eligend' de seipsis & aliis duodecim, &c. Dyer ibidem.

16 Jurors to make the Grand Assise. Evidence.

27. If four Knights do not appear, but some of them, an Habeas Corpora shall issue to the Sheriff, Dyer 79. b. and no al' Summons.

Hab' Corpora to bring in the 4 Mil'.

28. If four Knights be Return'd and Appear, and one is Challeng'd and found true before the Justices of the Bench, an al' Summons may be awarded to Return another in lieu of him challeng'd, and an Habeas Corpora against the other, this was done 2 P. & M. Michael Term. Dyer 103. Pl. 8. which is contrary to other Opinions, that the four Knights should be challeng'd, or at least not to be challeng'd before the Justices; for which see afterwards.

Challenge of the Knights. *Al' Sum'* in Case one challeng'd, be withdrawn, *Hab' Corpora* against the rest.

No Challenge

29. When the four Knights appear, they shall be sworn lawfully and truly to chuse twelve Knights, gladiis cinctis, of themselves and others, which best know, and will declare or say the truth between the Parties; and the Demandant and Tenant may be ordered to go along with the four Knights to make their Challenges to those that shall be chosen by them; for after the Pannel made by the four Knights, no Challenge can be made either to the Array, or to the Polls before the Justices, Rast. Entr. 241. b. 242. Leon. 1. p. 303. 7 H. 4. 20. 39 E. 3. f. 22. Br. Droit. 16. Littleton Sect. 514. Co. Lit. 294. a. ¶.

Oath of the four Knights.

30. It's said, 13 E. 4. 1. Br. Droit. 12. against the Opinion of Co. Lit. 294. That the four Knights may be likewise challeng'd, but not before Justices (as the Case of Dyer 103. before-mention'd) but where they and the Parties are together when they are chusing the other Knights; and if one be challeng'd, it shall be tried by the other Three; and if two be challeng'd, by the other two; and if Three be challeng'd, a new

Challenge of the four Knights, to be tried, &c. 2 Stat. 2 H. 8. c. 2. Sciatis to be within 60 years.

Oath of the Jury.

31. The manner and Form of the Oath to the Jury that are to try the Cause upon the meer Right. Vid. Lit. Sect. 514. Leon. 3. p. 162. Anders. Rep. 1 p. Heidon and Ingreave's Case. 148.

Tenant shall first begin his Evidence.

32. The Tenant shall first begin his Evidence in a Writ of Right, Leon. 3. p. 162. Heidon and Ingreave's Case. Moor Rep. 762. Dyer 247. pl. 75.

The Issue arises by the Pleadings on him.

What may be given in Evidence.

33. Any thing but a collateral Warranty may be given in Evidence. Br. Droit. 48.

Demy-mark.

34. If the (Seisin) of the Demandant or his Ancestor be not in the time of the King, in whose Reign he has alleg'd in his Count, the Tenant may tender a Demy Mark to the King to have the Seisin inquir'd by the Grand Assise; and then if the Grand Assise find not the Seisin, as it is alleg'd, they ought not to enquire any further of the Right, Lit. Sect. 514. Co. Inst. 294. b. 10 E. 3. 20. 10 E. 4. 9. See the Case quoted by Littleton Sect. 514. abridg'd by Fitz. Grand Abridg. Tit. Droit 26. 3 E. 3. Iter Northamp. but elsewhere in any printed Report.

Reason of the Demy-mark.

Quær the true reason of this Tender of the Demy-Mark, I find no Entry of it in any Book of Entries; but I have a Manuscript Copy of a Record in Q. Elizabeth's time, wherein the Tender of the Demy-Mark is entred, but the Writs and the Number-roll I know not. The Copy of the Record, at large follows here afterwards.

Time of Tender of the Demy-mark.

35. There's a great Question in the Law, What is the most proper time for the Tender of the Demy-Mark, Whether on or before the joyning of the (Mise) as it is in Lit. Sect. 514. at the joyning of the (Mise) or at the time of swearing of the Jury, as Br. Droit. 41. But the Law is now taken, that it ought to be at the swearing of the Jury. Moor Rep. 762. Quær whether at this day there needs any Tender of the Demy-marks at all, because at Common Law the Seisin could not be traversed, but now Mise may be tendred upon the Seisin, by the Statute of 32 H. 8. c. 2. Br. Droit. 32. By which Statute the Seisin ought to be within sixty years. If the Seisin be within sixty years, and it be alledg'd in the Count within sixty

† That Case is contrary

Whether the Demy-mark needs to be entred this day. Per Stat. 32 H. 8. c. 2. Seisin to be within 60 years.

again

aginț' annos jam plurim' elaps' [illegible] Domini Regis C[illegible]

[illegible] 1 Inst. 114. b. [illegible] 1 Inst. 94. 1. Inst. 93. a. [illegible]

Thus much of the Grand Assise.

36. [illegible] 1. Battle.

by Battle, and in such Cases the Count after Battle joins, (which is called waging of Battle.)

Waging [illegible] Proceedings therein [illegible] R. 6. 1 R. 6. A. 6 A.

Et prædt' L. per A. B. Attornatum suum ven' & defend' jus ipsius D. (the Demandant) & seisinam suam, &c. Et totum, &c. ut de feodo & jure, &c. & maxime de Tenementis prædt' cum pertinentiis, &c. Et hoc paratus est defendere per Corpus liberi hominis sui G. B. nomine qui presens est hic in Curt' illud defendere per Corpus suum, & qualitercunque Cur' Domini Regis Cons', Et si tale contingat de eodem G. B. quod absit, paratus est illud defendere per alium qui, &c. Co. Entr. 181. a.

Entry of waging Battle.

Record.

The Demandant joyns thus——Et prædt' D. dicit qd' prædt' L. injuste defend' jus ipsius D. & seisinam suam, &c. & totum &c. ut de feodo & jure & maxime de tenementis prædt. cum pertinentiis, &c. quia dic' quod ipsemet fuit seisit' de tenement' prædt' cum pertinen' in Dominico suo ut de feodo & jure tempore pacis, tempore Domini Regis, nunc capiend' exples' ad Valenc', &c. Et quod tale sit jus su' paratus est illud disrationare per Corpus liberi hominis sui H. T. nomine qui presens est hic in Cur' parat' illud disrationare per Corpus suum, & qualitercunque Cur' Domini Regis cons', Et si mal' contingat, &c. Co. ibidem, Vill. 1 H. 6, 7.

Waging Battle. Proceedings therein *tempore* H. 6. 1 H. 6. f. 6 b.

The Writ of 1 H. 6. [illegible] Curia [illegible] it is [illegible] other Actions. In a Writ of Right for the Manor of Copenhaw in the County of Northumberland, Battle was [illegible] upon the Mise [illegible] appear'd; and it was [illegible] the Champions [illegible] the Tenant [illegible] Chandler, in [illegible] Demandant [illegible] and in the Demandant [illegible] Champions [illegible] Grenders, &c. [illegible] Champions were [illegible] to appear the next day after the Feast of [illegible] Paul, in their Array, and at the day Babington [illegible] ed the Champion of the Tenant to come over the Court and come to the West bare upon the East-side, and so the Champion of the Demandant on the West-side, and the Champions being on their Knees, the Counsel of the Parties were askt by the Chief Justice, why they should not allow the Champions, and why they should not wage the Battle, who answered, they knew no Cause. The further proceeding of the Champions and the Battle, and their Array, you may see further in that Case which is Abridg'd by Brooke Tit. Droit 20. And in the Case of Paramour, Dyer 301. which is the last Case of Battle reported in our Law Books in the 13 Eliz. The Entry of all the Proceedings in this Case of Paramour is in Co. Entr. 182. a.

Champions.

37. The Battle cannot be performed by the Demandant and Tenant in their own Persons, but must find Champions, because if either should be slain, no Judgment could be given. But in an Appeal, the Parties shall fight for themselves, because if one be slain, the end of the Combate is obtain'd. Co. Inst. 294. b. Co. Lib. 9. f. 31, 32. b. The Case of the Abbot of Strata Marcella. Mirror. c. 3.

Essoine of the *Champion* and his Master.

38. After Battle waged, the Champion and his Master may be both severally one after another Essoined. Fleta, Lib. 6. c. 9. in fine.

Oath of the *Champions.*

39. The Champions must take an Oath, the Form whereof you may see in Co. 2 Inst. 247. At the Common Law, the Champion for the Demandant was to Swear that he or his Father saw the Demandant in seisin of the Lands, and that his Father Commanded him to prove it. But because Champions commonly took the Oath, though neither they

nor

40. The Champions shall Combate but once, and therefore if they Fight till the Stars appear, the Tenant shall prevail, for it is sufficient for the Tenant to defend being in Possession. Co. 2 Inst. 247. 2. Shall Combate but once.

41. The Judges of the Common Pleas are Judges ibidem: If the Champion be vanquished, the Victor shall demand Judgment that he is vanquished, and he shall acknowledge his fault in the Audience of the People, and pronounce the Recreant words (Craven) and Judgment shall be forthwith given, and the Recreant shall amittere liberam legem, i. e. become infamous, and never be of any Jury or a Witness. Co. 2 Inst. 247, 248. Justices of the Common Pleas, Judges of the Combate.

So far of Trial by Battle.

41. Trial by a Common Jury shall be where issue is taken upon any Collateral Point, and not upon the meer Right, as upon a Collateral Warranty or the like. 9 E. 4. 46. Br. Droit. 48. 3. By a Common Jury.

42. The Judgment in this Action is in this Form, viz. Quod Tenens ten' Terr' ill' sibi, & hæred' suis in pace versus petent' & hæred' suis in perpetuu'. Judgment final shall be given against the Demandant, if the seisin be not found as he hath Counted, or if after the (Mise) joyn'd the Demandant be Nonsuited, or Verdict be found against him. Against the Tenant if he make default after the Mise joyned, or Confesses the Action, but yet not without a Petit Cape, Co. Lib. 5. 86. & 2 Cr. 292. Lilburne verf. Heron. Lit. Sect. 514. Co. 1 Inst. 295. b. Co. Lib. 5. 85. Penrins Case. Judgment in a Writ of Right.

Judgment after the *Mise* joyned binds all strangers that make not their claim within a year and a day: But this is to be after Execution. *Fitz. Abridg. tit. Fauxif. Recovery.* 1. *tit. Cont. claime.* 7. *Pl. Ca.* 357. & Now no barr by Equity of the Statute of Non-claime. 34 *E.* 3. *c.* 16. *Pl. Com.* 360.

For the further illustration and practical understanding of what is before said, I shall proceed next to some Entries of Records, and Presidents in this Action, whereby what is before in Theory, may be here seen in Practice, most of them are Records in the Castle of Chester, before the Justices of Chester; and observable for their Antiquity and Jurisdiction Entries upon Record.

[illegible] ſignification of the Court. But I ſhall [illegible] that Mesne [illegible] [illegible] of the Common Pleas [illegible] Dony-mark is rendred, which Entry of the Dony-mark is not (as I think) in the Book of Entries [illegible].

The Writ.

Record, *tempore Elix. Regine.*

Et prædict' Q. B. per T. B. Attornatum ſuum ven' & defend' jus prædict' R. jam petent & ſeiſinam prædict' R. N. Mil' de qua &c. quando &c. Et totum &c. Et quicquid &c. Et maxime Tenement' prædict' cum pertinen' ut de feodo & jure, &c. Et

Miſe joynt.

ſeiſinam de Corpore ſuo exeun', ut ill' tenet an præd. R. habend. eadem Tenement. cum pertinentis, ut ill. ſuperius petit. &c.

Tender del Dony-mark.

Et profert hic in Cur. ſex ſolid. & octo denarios ad uſum Domine Regine nunc, &c. pro eo ſcilicet quod inquiratur de tempore, &c. Et ideo pet. quod inquiratur per Aſſiſam utrum præd. R. N. Miles fuit ſeiſit' de Tenement. præd. cum pertinen. in Dominico ſuo ut de feodo tempore dict. Dom. Regis Henrici Octavi prout præd. R. jam pet. ſuperius allegavit. Et præd. R. N. ſimiliter. &c. Ideo præceptum eſt Vic. quod ſum. per bon. ſum. quatuor legales Milites gladiis cinctos de Balliva ſua, quod ſint coram, &c. ad Eligend. de ſeipſis, &c. ad faciend. Recognition. magne Aſſiſe præd. &c. Idem dies dat. eſt tam præfat' R. quam præfat' Q. hic, &c. Ad quem diem hic ven' tam, &c. Et Vic' videlicet A. B. modo mand' quod ipſe ſummon' fecit A. B. C. D. quatuor legales Milit' de Com' ſuo gladiis cinctos per Johannem Doe & Ricard. Roe, Ballivos ſuos Eſſend. hic ad præfat. Octab. St. Hillar. ad faciend. prout bre. inde in ſe exigit & requirit. Et quod ſum. prædict. & eorum uterque manucapt. eſt per M. & N. Et prædict. A. B. C. D. quatuor Mil. ſolemnitr. exact. non ven. ſed defalt. fecer. Ideo Præceptum eſt Vic. quod habeat hic in Craſtin. Trinitatis Corpora præd. A. B. C. & D. quatuor Mil. & gladiis cinct. ad faciend. Election. magn. Aſſiſe Domini Regis præd. inter partes præd. de Tenement. præd. cum pertinen. in forma præd. &c. Idem dies dat. eſt tam præfat. R. quam præd. Olivero & Agneze, hic ad audiend. Election. magne Aſſiſe præd. Ad quem diem hic ven. tam præd. R. quam præd. Oliverus & Agnes per Attornatum ſuum præd. Et præd. A. B. C. D. quatuor Mil.

Bre' ad eligen' quatuor Mil.

Hab. Corpora 4 Militum.

Mil', &c. exact. quilibet eorum videlicet A. B. & C. ven. & præd. D. non ven. Et præceptum fuit Vic. quod habeat hic ad hunc diem Corpora eorundem A. B. C. & D. Et Vic. modo mand. quod quilibet eorum attachiat. est per Johan. Man, Hugon. Den. Ideo Præceptum est Vic. quod Distring. eosdem A. B. C. & D. quatuor Mil. &c. per omnes rectas, &c. Et quod sint coram nobis, &c. ita quod habeat Corpora eorum hic in Craftin. Animæ ad faciend. Electionem magn. Assise Domini Regine, inter partes præd. in forma præd. &c. Idem dies dat. est tam præfat. R. quam præfat. O. & A. hic &c. Ad quem diem hic ven. tam. præd. O. & A. per Attornatum suum præd. Et Vic. modo mand. quod quilibet præd. A. B. C. D. seperatim per se distric. est per Catalla ad Valenc. xl.s. & manucapt. est per L. & D. superer. quo præd. A. B. C. & D. quatuor legales Mil. &c. exact. in propria persona sua, ven. & jurat. super sacrament. sua in presentia partium præd. elegerunt de seipsis & aliis sexdecem, &c. videlicet E. F. I B. &c. probos & legales homines &c. ad faciend. electionem Recogn. magn. Assise præd. Ideo Præceptum est Vic. quod venire fac. hic tal. die ad faciend. Recogn. præd. Idem dies dat' est partibus præd. hic, &c. Ad quem diem hic ven. præd. W. per Attornatum suum præd. Et præd. O. & A. solemniter exact. non ven. sed defalt. fecer. Ideo Tenement. præd. cum pertinen. capientur in manus Domini Regis, Et præd. O. & A. sum. quod sint hic in Octab. St. Michael. additur. inde judic, su. &c. Ad quem diem hic ven. præd. W. per Attornatum suum præd. Et præd. O. quarto die plitii. solemniter exact. non ven. Et super hoc ven. præd. Agnes ux. præd. O. hic in Cur. in propria persona sua, Et dic. quod præd. Tenementa cum pertinen. qu. præd. W. superius vers. sus eam & præfat. Virum suum pet. sunt jus ipsius Agnet. unde ex quo eadem A. ven. ante judic. inde redditum paratum jus suum defendere & præfat. Willmo. respondere pet. quod ipsa per defalt. præd. O. Viri sui non admittat inde jus suum sed quod admittatur ad defensionem juris sui. Et admittitur, &c. Et super hoc præd. W. pet. versus ipsum A. Tenta. præd. cum pertinen. in Forma præd. &c. Et unde &c. quod, &c. Et præd. A. voc. ad Warr. &c.

Distring' ad Milites

4. Mil. summon' & jurat' eleger' &c.

Venire fac' vicec. sus jurat' elect.

Tenent fecit def. falsam.

Pleit Cape.

Uxor Tenentis Recipitur.

Placita Com' Ceſtr' tent' apud Ceſtr', coram *Bartholino* de Burgherſh' Juſtic' Domini Comit' Ceſtr', die martis proxime poſt Feſtum St. Michaelis, Anno Regni Regis E. Tertii a Conqueſtu xxxvii.

Ceſtr. ſſ. *Johannes de Delves* Chivalier, & *Iſabella* Uxor ejus, per Attornatum ſuum pet' verſus Magiſtrum *Johannem de Brunham* medietatem quarte partis Maner' de *Malpas*, cum pertinen', exceptis un' molendin' ventritico carucat' Terr' & ſex Acr' boſci in eadem quarta parte, ut jus & hæreditatem ipſius *Iſabellæ* per bre' Domini Comitis Ceſtr' Præcipe in Capite, &c. Et ſciend' quod al' medietas quarte partis Maner' præd. exceptis fil' Willimi' Brereton Mil', ſimul peten', &c. Sum' fuit eſſend' hic ad hunc diem, &c. ad ſequend'

Summons & Severance. Et modo non ven', Ideo Conſideratum eſt quod præd. Johannes de Delves & Iſabella ſequantur ſine, &c.

Count. Et unde idem Johannes de Delves & Iſabella dic', quod quidam Willielmus fil' David le Clerk fuit ſeiſit' de præd' quarta parte Exceptis, &c. in Domino ſuo, ut feodo & jure tempore pacis tempore H. quondam Regis Domini Domini Regis nunc capiend' inde Exples' ad Valenc', &c. Et de ipſo Willielmo quia obiit ſine hæred' deſcend' jus, &c. cuid' Philippo ut fratri & hæred', &c. Et de ipſo Philippo deſcend' jus, &c. cuid' David. de Malpas hæred' &c. Et de ipſo David' deſcend' jus, &c. cuid' Phil. ut fil' & hæred', &c. Et de ipſo Phil. deſcend' jus, &c. cuid' David. ut fil' & hæred', &c. Et de ipſo David deſcend jus, &c. cuid. Phil. ut fil. & hæred, &c. Et de ipſo Phil. deſcend' jus, &c. iſt' Iſabellæ qu' nunc petit ſimul, &c. Et cuid' Ellene Sorori ejuſdem Iſabellæ, ut filiabus & hæred, &c. Et de ipſa Ellena deſcend' jus &c. propartis ſu' ipſar' inde contingentis, &c. præfat' Willielmo fil' Willielmi, ut fil' & hæred' qui modo non ſequitur, Et quod tal' ſit jus ipſius Iſabellæ, iidem Johannes & Iſabella offerunt, &c.

Releaſe plede. Et Magiſter Johannes de Brunham, in propria perſona ſua ven' & defend' jus ipſius Iſabellæ quando, &c. Et ſeiſinam præd' Willielmi fil' David. ut de facto & jure de cujus ſeiſin', &c. maxime de prædict' medietate cum pertinen' Exceptis, &c. Et totum, &c. Et dic' quod quidam Johannes de Sayntpere Mil' nuper de prædict' Tenement' cum pertinen' fuit ſeiſit' in dominico ſuo ut de feodo et jure, &

inde

inde feoffavit Magiſtrum Johannem de Brunham & Richard' de Stafford Mil', Johannem de Wingefield Milit' & Johannem de Hale hend' ſibi & hæred' ſuis imperpetuum Virtute cujus feoffamenti iidem Richardus, Johannes de Wingfield, Johannes de Hale & Magiſtr' Johannes fuer' ſeiſit' in Forma præd' qui quidem Johannes de Wingfield & Johannes de Hale, obierunt per quod Tenementor' prædict' accrevit ipſis Richardo & Magiſtro Johanni, &c. Qui quidem Richardus per nomen Richard' de Stafford Domini xxiii. die Maii, Anno Regni Domini Regis nunc xxxvii. remiſit, relaxavit & omnino pro ſe quiet' clam' ipſo Magiſtro Johanni de Brunham totum jus & clam' qu' habuit, ſeu quoviſmodo habere' potuer' in Ten' cum pertinen' per nomen omnium Terrar' & Tenementor' qu' nuper fuer' Domini Johannis de Seyntpete Milit' in Com' Ceſtr' Et pon' ſe in magnam Aſſiſam Domini Comitis Ceſtr', Et pet' Recognic' fier' utrum ipſe majus habeat in Tenement' præd' cum pertinen', ut jus ſuum ſicut illa tenet an præd' Johannes de Delves & Iſabella ſicut

Miſe joynt.

Dat' eſt partibus præd' hic ad prox' Com' ſcilicet die Martis in Vigil' St. Luce Virginis prox' futur' / Aſſiſe, Et tunc ven' hic quatuor Mil' ad faciend' Election' ill' &c. Ad quem diem ven' partes præd', & Hugo de Venables Chivaler, Thomas de Dutton Chevaler, Adam de Houghton Chevaler & Henricus de Norris Chivaler, ſimiliter ven' qui per ſacrament' ſua in preſentia partium præd' de ſeipſis & aliis elegerunt ſexdecem Hugon' de Venables Chivaler, Thom. de Dutton Mil' Ada' de Houghton Che. Henric' de Norris Chivaler, Richard Fyton de Bolyn, Ranulph' de Weever, Johan' de Thom. de Davenport, Johan' de Hockenhull, Will' de Horton, Will' de Stanley, Richard' Donne de Robertum de Legh ſenior' Thom' de Stathum & Edmund' de Cotton, ad faciend' Recognic' Aſſiſe præd', Ideo Præceptum eſt Vic' Venire fac' eos hic ad prox' Com' ſcilicet die Martis prox' poſt Feſtum St. Hillarii tunc prox' ſequen' ad faciend' Recognic' præd', &c. Idem dies dat' eſt partibus præd' hic' &c. Ad quem diem Martis partes præd', &c. Et Jurat' inde inter partes præd' poſita fuit in reſpectu hic inter partes præd' uſque ad hunc diem ſcilicet die Martis prox. poſt Feſtum St. Scolaſtic' Virginis tunc prox. ſequen. pro defectu jurator. &c. Et modo ven. partes præd. & ſimilitr. Jurat' ven. qu' de conſenſu partium præd. elect. triat. & jurat. dicunt ſuper ſacrament. ſuum quod præd. Johannes de Delves & Iſabella majus

Summons ♣ Militer.

Electio magn. Aſſiſe.

Noia' jurator'.

Venire fac'.

Verdict magne Aſſiſe.

majus jus hent. habend. præd. medietatem quarte partis Man'er. præd. cum pertinen. Exceptis, &c. ſibi & hæred' ipſius Iſabellæ, ut de jure ejuſdem Iſabellæ ſicut illam petunt quam præd. Magiſtr. Johannes teneat illam ſicut illam tenet prout iidem Johannes Delves & Iſabella ſuperius per bre. ſuum præd. ſuppon. Ideo Conſideratum eſt quod præd. Johannes de Delves & Iſabella recuperent ſeiſinam ſuam verſus præd. Magiſtrum Johannem de præd. medietate cum pertinen' tenend. ſibi & hæred. Iſabellæ quietam de præd. Magiſt. Johanne & hæred' ſuis imperpetuum, Et Magiſtr. Johannes in miſericordia. &c.

Iudic'.

Judicium.

Releaſe pleaded

Quær. what neceſſity there was of Pleading of this Releaſe by one Joynt-tenant to another; whether the ſame might not have been given in Evidence, and the Tenant have put himſelf upon the Grand Aſſiſe generally? I conceive he might for the reaſon before mentioned.

Seiſin.

Note, here by this Record, the Tenant muſt defend the right of the Demandant, and the ſeiſin of him in whom the ſeiſin is alledg'd in the Count. And to Confirm this, ſee Co. Entr. 182. b.

Coune.

View.

Novel Count.

Voucher.

Imparlance.

Cenced' vocar'.

Summons *ad Warrantizand.*

Entr' in War.

Novel Count.

Voucher over.

Entr' in War.

Novel Count.

Confeſſion.

Judgment.

In the 2 Eliz. amongſt the Records in the Caſtle of Cheſter, Ro. 12. b. There a Writ of Right is brought, and the Tenant appears, and after the Count demands the View, which was granted Returnable die Veneris the ſame Seſſions; then at the day and View return'd, the Demandant Counts again, then the Tenant imparls till the next Seſſions: At which next Seſſions the Parties appear, and the Tenant Vouches, and the Demandant Imparls till the next Seſſions; At which time the Demandant (Concedit vocare) and then a Summons ad Warrantizand' iſſues, Returnable the firſt day of next Seſſions, at which Seſſions the Vouchée enters into Warranty gratis; And the Demandant Counts again, and the Vouchée vouches over, and the Writ of Summons ad Warrantizand' returnable mercur. the ſame Seſſions, at which time the Second Vouchée apears and Enters into Warranty, and the Demandant Counts again againſt him, and the Second Vouchée Confeſſes the Action, and judgment given for the Demandant againſt the Tenant, and he over againſt the Firſt Vouchée, and the Firſt Vouchée againſt the Second Vouchée. The Record in part is as followeth.——

Placita

Placita apud Ceſtr' coram Johanne Throcm'ton ar'o Juſtic' Dominæ Reginæ apud Ceſtr' ad Seſſionem tent' ibid. die Lunæ videlicet xxvii. die Maij Anno Regni Dominæ Eliz. Dei gratia, &c. Reginæ fidei Defenſor', &c. Secundo.

Johannes Manley Gen. per *Edw. Holland* Attorn. ſuum pet. *Ceſtr.* ſſ. verſus *Robertum Sound* unum Meſſuagium quadraginr. acr. terr. Bre. & vigint. acr. Paſtur. cum pertinentiis in Shocklach qũ. clam. ut jus & hæreditat. ſuam.

Et unde idem *Johannes* per Attorn. ſuum pd. dic' quod quidam *Nicholaus Manley* avus pd. *Johannis Manley* cujus hæres ipſe eſt fuit ſeiſit. de Tenementis pd. cum pertinentiis in Dominico ſuo ut de feodo & jure tempore pacis tempore Domini H. Septimi nuper Regis Angl. videlt. infra ſexagint. annos ultim. elapſ. capiend. inde exples' ad valenc. &c. Et de ipſo *Nicholao* deſcend. jus Tenementor. pd. cum pertin. cuidam *Henrico Manley* ut fil. & hæred. pd. *Nicholai*, & de præfat. *Henrico* deſcend. jus Tenementor. pd. cum pertin. iſti *Johanni* qu. nunc pet. ut fil. & hæred. pd. *Henrici* Et quod tal' ſit jus ſuum offert, &c. Count.

Et pd. *Robertus Sound* per *Robertum Brooke* Attorn. ſuum ven' & defend. jus ſuum quando, &c. Et pet. viſum de Tenement. pd. cum pertinentiis & hab. &c. dies dat. eſt partibus pd. hic uſq; diem Vener. prox. futur. iſt. ead. Seſſion. &c. Et interim &c. Eo modo, &c. Defence. View.

Note, This Count differs from the other by reaſon of the Statute of 32 H. 8. c. 2. which has appointed the time of Limitation for Seiſin in a Writ of Right to be ſixty years, Co. Entr. 182. b. Seiſin 60 years.

The Defence here entred, is not right; for it ſhould have been Ven. & defend. jus ipſius *Johannis Manley* & ſeiſinam ipſius *Nicholai* quando, &c. Et totum, &c. Et quicquid, &c. as in the Preſident before; and Co. Entr. 182. b. And in a Record in the Caſtle of Cheſter in the Court of Common Pleas there before the Juſtices of Cheſter, where View is demanded, Ad Com. tent. die Martis prox. poſt Feſtum Sti. Hillarij, 37 E. 3. b. Defence,

q. Juchabet v Tent. claimed under the Seizen of N. M. & therefore need only to defend the Right of the demandant suum sumus et nunq

Only I find this ſort of Defence (as in this Record of Q. Eliz.) in Co. Entr. 181. a. in a Writ of Right of Advowſon upon a general Imparlance, but upon a ſpecial Imparlance in the very next Action, there the Entry is, as I have ſaid before (i. e.) to defend the Right of the Demandant, &c.

Ceſtr. ſſ. Ad Com' die Martis prox' ante Feſtum Sanctæ Lucæ Virginis, 38 *E.* 3. Ro. Ceſtr. Lxxxiv.

A Writ of Right wherein many Deſcents are mentioned in the Count, to Coheirs, the Tenant pleads a Feoffment with Warranty by the Anceſtor, who was ſeiſed, and puts himſelf upon the Grand Aſſiſe. And after the awarding of the Summons to the four Knights, &c. the Tenant makes Default, and Judgment finally is given, which ought not to have been (as I conceive) without a Petit Cape, Co. lib. 5. 86. and Or. 2. p. 292. *Lilburn* verſus *Heron*. The Action is between John Collie and Agnes his Wife, and John Whitmore Demor and Chriſtiana his Wife againſt Willielm. Dandy, Johan. de Shagh, Johan' Gamel Capellan', and Robert. Picks Capellan' for Lands in Middlewich and Newton. This Writ is a Writ of Right, Quia Dominus Hugo de Venables Mil' & Willielmus del Holt Capital' Domini Feod' ill' ipſo Comit' remiſer' Cur' ſu.

Com. Recoveries by Writ of Right in *Cheſter*.

In the 22 E. 4. Rolls in the Caſtle of Cheſter, there are ſeveral Recoveries in a Writ of Right for Security of Lands, as common Recoveries are now upon a Writ of Entry ſur diſſeiſin en le poſt, The Tenant calls to Warranty *A. B.* the Vouchée appears gratis, and the Demandant Counts againſt him; then the Vouchée joyns the Miſe upon the meere Right; and the Demandant imparles, and the ſame Counte appears again, and the Vouchée makes default in Contempt of the Court, and Judgment final is given. One of the ſaid Records at large here follows, viz.

Com. Cestr. die Martis prox. post Festum Sti Hillarii, 37 E.

Placita

Placita Com' Ceſtr' apud Ceſtr' coram *Thoma* Domino *Stanley* Mil' Juſtic' Domini Principis ibd. die Martis proxime poſt Feſtum St. *Annæ* Anno Regni Regis *Edwardi* quarti poſt Conqueſtum Angl' viceſimo ſecundo.

Willielmus Botiller & Willielmus Tatton in propria perſona ſua pet. verſus Willielm' Wiche & Margeriam uxor. ejus octavam partem Manerii de Pickmeire duo. Meſſuag' cent' acr' terr' decem acr' prati viginti acr' paſtur' & ſex acr. boſci in Pickmeire & Wymyncham ut jus & hæreditat' ſu' per Breve Domini Regis de Recto Præcipe in capite, &c. Et unde dic' quod ipſimet fuer' ſeiſit' de prædict' octava parte Maner' meſſuag' terr' prat' paſtur' & boſci præd. cum pertinen' in Dominico ſuo ut de feodo & jure tempore pacis tempore Domini Regis nunc capiend' inde Expleſ. ad valenc', &c. Et quod tal' ſit jus ſuum offerunt, &c.

Et prædict. Willielmus Wiche & Margeria uxor ejus in propria perſona ſua ven' & defend' jus prædict. Willielmi Botiller & Willielmi Tatton quando, &c. Et ſeiſin. de qua Seiſina, &c. ut de feodo & jure, &c. Et maxime de prædict' octava parte Maner' meſſuag' terr' prat' paſtur' & boſci pd' cum pertinen' & totum, &c. Et Vic' inde ad warr' quendam Adam Brikhened qui præſens eſt hic in Cur' in propria perſona ſua & gratis octavam partem Maner' Meſſuag' terr' prat' paſtur' & boſci pd' cum pertin' eis warr', &c. Et ſuper hoc prædict. Willielmus Bottiler & Willielmus Tatton pet' verſus prædict. Adam tenen' per Warr' ſu' octavam partem Maner' meſſuag' ter' prat' paſtur' & boſci prædict' cum pertin' in forma prædict. &c. Et unde dic' quod ipſimet fuer' ſeiſit' de prædict. octava parte Maner' meſſuag' terr' prat' paſtur' & boſci prædict. cum pertinen' in Dominico ſuo ut de feodo & jure tempore pacis tempore Domini Regis nunc capiend' inde Expleſ. ad valenc', &c. Et quod tal' ſit jus ſuum offerunt, &c.

Et prædict. Adam tenens inde per Warr' ſu' defend' jus prædict. Willielmi Botiller & Willielmi Tatton quando, &c. Et ſaiſin' eor' de qua ſeiſina, &c. ut de feodo & jure, &c. Et maxime de prædict. octava parte Maner' meſſuag' terr' prat' paſtur' & boſci prædict. cum pertin' & totum, &c. Et pon' ſe inde in magnam Aſſiſam Domini Principis, &c. Et pet' Recognitionem fier' utrum ipſe majus jus het' tenend. per octavam partem Maner' meſſuag' terr' prat' paſtur' boſc. pd. cum pertin' ſicut ill' dicit ut tenens inde per Warr' ſu' prædict. An prædict. Willielmus Botiller

Impariance p Demandant.

Ceſtr. ff.

Count.

Defence.

Voucher.

Grand Aſſiſe.

Botiller & Willielmus Tatton hend' prædict' octavam partem Maner. meſſuag. ter. prat. paſtur. & boſci pd. cum pertinentiis ſicut illa ſuperius petunt, &c.

Imparlance per Demandant.

Et prædict. Willielmus Botiller & Willielmus Tatton pet' licentiam inde interloquend' & hent', &c. Et poſtea ift. eod. Com. &c. iidem Willielmus Botiller & Willielmus Tatton reven. hic in Curia in propria perſona ſua, &c. Et prædict. Adam licet ſolemniter exact. non reven. ſed in contempt' Cur' defalt' fecit Ideo conſideratum eſt per Cur' quod iidem Willielmus Botiller & Willielmus Tatton recuperent Seiſinam ſuam verſus prædict. Willielmum Wyche & Margeriam Uxorem ejus de prædict. octava parte Maner' meſſuag. terr. prat. paſtur. & boſci præd. cum pertinen' tenend' eiſdem Willielmo Botiller & Willielmo Tatton & hæred. ſu' quiet. de præd. Willielmo Wyche & Margeria Uxore ejus & hæred. ſu'. Et de præfat. Adamo tenend' per Warr. ſu. & hæred. ſu. imperpetuum Et quod iidem Willielmus Wyche & Margeria hent. de terr. pd. Ade ad valenc', &c. Et idem Ad' in mia', &c.

Default per Tenant.

Judgment.

In the time of E. 4. there are ſeveral Actions of the ſame nature, both with ſingle and double Vouchers.

Ad Com' Ceſtr' coram Gilberto Domino de Talbott Juſtic' die Martis prox' ante Feſtum Sti. Dionyſii martyris. 3 H. 5.

Ceſtr. ſſ. Richardus del Vykers & Emma ux' ejus & Richardus de Mottra & Iſabel' ux' ejus in propr. perſona ſua per verſus Katherinam quæ fuit uxor Thom. del Hogh de Thornton duas partes trium partium Maner' de Leghton juxta Neſton cum pertinen' quæ ſimul cum altera tertia parte earund. trium partium Thom. de Fytch & Margeria ux' ejus hic in Cur' Clam' ut jus ſuum per Breve Domini Regis de Recto, &c. Summons & Severans & judicium quod ſequantur ſine, &c.

Summons & Severans.

Et unde dic' quod quædam Amicia filia Willielmi de Leghton conſanguin' ipſarum Emme & Iſabelle cujus hær' ipſæ ſunt fuit ſeiſit' de prædict. tertia parte, &c.

Miſe joyn.

The Tenant joyns the Miſe upon the meere Right. Ideo fiat inde magn. Aſſiſa, &c. Then the Summons awarded to return the four Knights ad eligend' xii., &c. ad pren' Com', **which is continued by** Vic. nihil inde fecit. **And then at a further**

4 Knights ſum.

further County the Sheriff returns 4. Knights ſummon'd, viz. George of Carrington Mil. Willielmus de Stanley Mil. Johannes de Pull Mil. & Radu. de Boſtock Mil. qui modo in Cur. præſtiter. ſacrament. &c. Et Eleger. xii. &c. Videlicet Johan' de Letherland, Johan' Lancelyn, &c. Ideo ipſi ſum. quod ſint hic ad prox. Com. &c. which is continued to ſeveral Counties by Habeas Corpor. and Diſtring. Et quod ſum. prædict. 4. Mil. quod ſint hic ad eundem diem, &c. ad eligend. & ponend. per eorum ſacrament. xii. &c. tal. And then continued by al. Diſtringas, Et quod præd. 4. Mil. pon. xii. &c. tal. &c. at length the Jury appeared, Et per Conſenſum partium elect. triat. & jurat. found for the Tenant, and Judgment final given.

Election of the Jury by the 4. Knights.

Diſtringas.

Verdict.

Judgment. *pro Ten'.*

Note, in this Record is nothing ſaid of the Four Knights being joyned with the Jury, and therefore I conceive its ſaid that the Trial was per Conſenſum partium.

Pleadings.

Pleas proper in this Action.

THere are Pleas in Abatement of the Writ in this Action, Common to other Real Actions, as Variance between the Writ and Count, False Latin, Not purſuing the Form in the Regiſter, Death of one of the Demandants, &c. and the like, of which I purpoſe not to ſay any thing Conſiderable, but only as to what is proper to this Action.

In Abatement, it may be pleaded that the Demandant had nothing in the Land at the time of the Writ brought, but to him and the Heirs of his Body, or for Life, &c. becauſe none but Tenant in Fée-ſimple can bring this Writ. 5 E. 4. 2. b.

Abatement.

1. Becauſe Poſſeſſion is an Evidence of Right and Property; therefore in this and all other Real Actions in the Right, (Except ſuch as are grounded upon the Seignory, and

Count.

and not upon the Seiſin of the Land, as a Writ of Eſcheat, Right ſur diſclam. &c.) for Recovery of Lands and Tenements, the Demandant in his Count muſt alledge a (Seiſin) and taking of the Profits which is called the Expleas, ſo that it muſt be an actual Seiſin. Viz. Quod ſeiſit. fuit de Meſs. &c. in dominico ſuo ut de feodo tempore pacis tempore Domini Regis Capiendo inde *Expleſ* ad Valenc. &c. 26 H. 8. 3. Dyer 114. 21 H. 6. 22.

Deſcent in the Count.

2ly. If he Counts of the Seiſin of his Anceſtour, he muſt ſet forth the Deſcent of the Right, as de præd. B. diſcend. jus cuid. C. & de præd. C. iſt. M. ut fil. & hæred. &c. Et quod tal. ſit jus ſuum offert, &c.

Seiſin within 60 years.

3ly. Where he Declares upon the Seiſin of his Anceſtour, he muſt allevge it within 60 years by the Statute of 32 H. 8. c. 2. Co. 1 Inſt. 114.

Barr.

Defence.

Firſt, the Tenant muſt make Defence both before Plea to the Writ, as before the Barr, and again before the Rejoynder to the Replication. Br. droit. 11. 21 H. 6. 26. And the Defence in a Writ of Right Patent or Cloſe for Lands, differs from all others, for whereas in other Real Actions the Tenant defends his own Right, Viz. defend. jus ſuum quando, &c. In this the Tenant defends the Right and Seiſin of the Demandant, Viz. ven. & defend. jus ipſius W. (the Demandant) & ſeiſinam ſuam quando, &c. Co. Entr. 182. a. b. The true reaſon of this I could never yet find. Vid. antea 106.

Miſe joyn.

In a Writ of Right where the Miſe may be joyn'd upon the meer Right, there needs little of ſpecial Pleading, for all or moſt of ſuch matter (Except a Collateral warranty) may be given in Evidence upon the Miſe joyned upon the meer Right. Br. droit. 48. Vid. Lit. Sect. 478.

Special pleading & over to the Aſſiſe.

But if a Man will plead ſpecially in barr of the Aſſiſe, he muſt take care that his Plea be a Barr, or elſe he muſt with his ſpecial matter conclude to the Right, and put himſelf upon the Grand Aſſiſe, and therefore as to this, there is a Rule taken by Shard. P. 34 E. 3. tit. droit. That where the Plea pleaded, does not deſtroy the Right of the Demandant, but appears by the Plea that he may have a Right, he

he muſt conclude his Plea, by putting himſelf upon the Grand Aſſiſe; but when by his Plea it appears the Demandant has no Right, As a Fine levied by the Demandant himſelf, or a Releaſe by him, or a Collateral warranty, &c. he may conclude his Plea to the Action, Judic. ſi Actio, &c. P. 20 E. 3. tit. droit. & 34 E. 3. tit. droit. 29. And if the Demandant Reply and Iſſue be taken, the Trial ſhall be by a Common Jury, becauſe it is out of the Point of the Grand Aſſiſe, i. e. the mere Right is not Tried, but a Collateral matter. Br. droit. 42, 43. & 30.

Trial by Common Jury.

The Tenant may plead that the Anceſtour of the Demandant was never ſeiſed, i. e. ſi ſoit trove pon. ſe ſuper, &c. q. ad pluis mel. droit. P. 35 E. 3. 3.

Queux ſont bon Pleas in Barr.

But he cannot Traverſs the Seiſin in ſuch a King's Reign, but muſt tender a Demy-mark to the King, to have it inquired by the Grand Aſſiſe. 10 E. 3. 20. tit. droit. ſo note the difference; but now by the Statute of 32 H. 8 c. 2. he may Traverſe ſuch Seiſin (as I conceive) as is before ſaid.

Seiſin *lou* traverſable. *Demy-mark.*

A Man may plead Special matter, (as Recovery in an Aſſiſe,) and conclude to the Right. Et ſic melius droit. & pon. ſe ſuper Aſſiſam utrum, &c. for a Recovery in an Aſſiſe, cannot be in barr of a Writ of Right, becauſe it only fortifies and evidences the right of Poſſeſſion, but not the mere Right. M. 27 E. 3. 85. droit. 20. 8 E. 2. droit. 36.

Special matter, & *Conclude al droit.*

3. Recovery in a Ceſſavit by default is a good barr in a Writ of Right, becauſe the judgment is final by the Statute of Gloceſter, c. 4. 6 E. 1. But if the Recovery be by Verdict, its no barr, but he muſt conclude to the Right. M. 31 E. 3. droit. 53. Quær.

Recovery in *Ceſſavit.*

4. An Eſtate tail from the Demandant and his Anceſtours may be pleaded in barr without joyning the Miſe, becauſe the Trial cannot be by Battle or the Grand Aſſiſe, being but an Eſtate tail; ſo Baſtardy or a Leaſe for Life or years, &c. may be pleaded in barr. Tempore E. 1. & droit. 41.

Eſtate-tail, or for life, &c. pleadable.

Recovery in *bri' de droit.*

5. A Recovery by nufault in a Writ of Right, is no Plea in a Writ of Right, but Recovery by Battel, or the Grand Affife, or Inqueſt is a good Plea, becauſe the judgment is final. Tempore E. 1. droit. 50.

Eſtate mean Recovery by *touts* Eſtates.

6. A Recovery in a Præcipe quod reddat, and the Demandants Title mean, between the Teſte of the Writ and the Judgment, is a good bar to a Writ of Right. For a Recovery in Real Actions binds all Rights and Titles betwéen the Teſte of the Writ and Judgment, and therefore in a Præcipe quod reddat, if the Tenant alien, pending the Writ, the Alienee ſhall not have a Writ of Right, or any other remedy till the Judgment be Revers'd. Br. droit. 24. 12 Aſſ. 41. 7 E. 4. 19.

Tenant, *lou ſerr' Compel monſtr'* Title.

Grand Aſſiſe.

7. Note, that M. 18 E. 3. droit. 63. It appears, the Demandant may force the Tenant to ſhew a Title (and not ſuffer him to plead to the Aſſiſe generally,) by pleading in bar to the Aſſiſe, as to ſay, That his Grandfather's Father had Two Sons, and he claims from the Elder, &c. Et pet. judic. ſi Aſſiſa, &c. The Tenant rejoyns that the Grandfather's Father had Three Sons, and infeoffed the Third, from whom he claims by Deſcent, and ſets forth the Deſcent, and then prays the Aſſiſe. Note, there the Demy-mark tender by the Demandant to inquire of the Seiſin of his Grandfather. Tempore Henrici R.

Demy-mark tender *per* Demandant.

Defenſ' de novo

8. If the Demandant Reply to the Barr, the Tenant muſt make a Defence de novo in his Rejoynder, 21 H. 6. 26.

Voucher, Aid, Grand Aſſiſe.

9. Note, the Tenant may Vouch, Pray in Aid, Plead in bar, or put himſelf upon the Aſſiſe, and the Vouchée or Praiée in Aid may have like Pleas. 21 H. 6. 26.

Collateral Warranty.

10. A Collateral warranty is to be pleaded in barr, and not to be given in Evidence upon the Miſe joyned, and the reaſon I conceive to be, becauſe the warranty does not paſs any Right, i. e. mitter le droit out of the Feoffor, and put it into the Feoffee, but only barres him of his Right by force of the Covenant Real, ſo that if the Miſe ſhould be joyned upon the méer Right, the warranty would not help, becauſe the Grand Aſſiſe muſt give their Verdict upon the méer

mer Right, which remains still in the Party, notwithstanding the warranty, but if he plead the warranty in barr, then the Demandant is estop'd by his Warranty. Lit. Sect. 478.

11. In regard all special matters may be given in Evidence in a Writ of Right upon the (Mise) joyned, therefore that is the safest way so to plead. Evidente *sur le Mise.*

12. But if the matter in barr to the Assise be cléer, then it is sometimes most for the advantage of the Tenant to plead it, and not put himself upon the Grand Assise, which is very dilatory, and may become veratious to the Tenant by the Practice of the Demandant, by not prosecuting and suing out Process as he ought, and many other delays for want of Knights, their not appearing or the like: And this mischief and veration to a Tenant in a Writ of Right lately brought before the Justices of Chester about the 34 or 35 Car. 2. Between Wibunbury and others Demandants, and one Bolton Tenant, wherein the Demandant had a design méerly to ver and weary out the Tenant, who had an undoubted Title and Interest. The Tenant there, put himself upon the Grand Assise, (where he might have pleaded in barr) and by that means he suffered much by attendance from Assises to Assises, and could not bring it on to Trial, (though he much endeavoured it) through slowness in suing out Process by the Demandant, want of appearance of the Knights, &c. and the Demandant would not consent to any thing for Expedition, but afterwards one of the Demandants died, and so the Writ abated, which might have been prevented by pleading in barr, for then it must have been tried by a Common Jury. Sometimes better to plead in barr to the Assise.

Inter Wibunbury Pet', & Bolton Tenen' in Bri' de Recto. 34 Car. 2.

CAP. IV.

Writ of Right Close.

What. 1. THis Writ is peculiar to Lands in Ancient Demesne, and is always Close, and is directed to the Lord of the Mannor, or sometimes to the Bailiff of the Mannor thus.——

The Writ. Rex, Præcipimus tibi vel vobis quod sine dilacon' secund' consuetudinem Manerii de A. plenum rectum teneatis L. de un' Mess. &c. in B. qu. S. ei deforceat ne amplius inde clamorem audiamus pro defectu recti, Test. &c. F. N. B. 25. Rast. Entr. 141. b.

Protestation to Sue, in what nature of a Writ. He that brings the Writ, may make protestation to pursue it in nature of what Writ he pleases, either in nature of a Writ of Right, and then the Process is as in a Writ of Right before, and the Count and all other Proceedings, or in nature of an Assise of Novel disseisin, Cui in vita, or any other Real Writ, and therefore may be brought by Tenant for life, in Cui or in Dower, and then the Proceedings are in nature of the Writ set upon by the Protestation. F. N. B. 26, 27. Rast. Entr. 242. a.

By Tenant for Life.

Not removeable out of the Lord's Court. This Writ cannot be removed out of the Lords Court, but where the Land is free Land, or where the Demandant is Steward. 34 H. 6. 35. 1 H. 7. 30. 9 H. 7. 11. Rast. Entr. 242. b. 243. a. b.

Foreign Voucher, *Supersedeas.* In Case of a Foreign Voucher, the Tenant must pursue a Supersedeas to the Lord's Court, to cease till the Voucher be decided by a Warrantia Chartæ in the Common Pleas, F. N. B. 31.

Where *Mise* is joyned, whether removable? If the Mise be joyned upon the meer Right, it is a Question whether the Record shall not be removed into the Common Pleas, in the 1 H. 7. 30. Per Townsend it shall be removed, but adjudged contra, Dyer 111. 12 Ph. & M. and a Pro-

a Procedendo awarded. And in Rast. Entr. 141. b. Process is awarded to four ordinary Men to chuse the Grand Assise in the Court of the Warnot. The Record is removed by an Accedas ad Cur. Rast. Entr. 242. b. 243. a. b.

CAP. V.

Writ of Right in *London*.

This Writ of Right is of the same nature with the Writ of Right Patent, only different as to the place where the Lands lie, i. e. Concerning Lands in London; the Writ is directed to the Mayor and Sheriffs of London, thus.—— F. N. B. 13. What.

Rex, &c. Majori & Vicecomitibus *London* salutem, Præcipimus vobis quod sine dilacon' plenum Rectum teneatis N. S. de uno Messuagio, &c. cum pertinen' in *London* quod M. ei deforceat, ne amplius inde clamorem audiamus pro defectu recti, Test' &c. The Writ.

Vid. a Recovery and Entry of Proceedings in this Writ, Co. Lib. 1. 7, 8. where the Vouchee joyns the (Mise) upon the meer Right.

The Plea upon this Writ is not removable out of London by Tolt, Pone or Recordare; but in Case of a foreign Plea, or foreign Voucher, there the Record shall be removed into the Common Pleas by Writ out of the Chancery, and shall be remanded, when the Warranty is Tried by the Statute of Glocester c. 12. Vid. F. N. B. 14. how it shall be removed, Co. Entr. 176, 177. a. b. But the Statute of Glocester is Corrected by the Statute de foren' vocat' ad Warr' 9 E. 2. as to the manner of the Removal. Co. 2 Inst. 324, 325. Not removeable by *Tolt*, &c.

CAP.

CAP. VI.

Writ of Right of Dower.

What. THIS Writ is of little use or practice because of the ordinary Writ of Dower (unde nihil habet) for ordinarily now the Wife has no part of her Dower assign'd to her when she sues for Dower, and unless she have some part of her Dower in the same Town, and of the same Person, and sues for the Residue, she needs not bring a Writ of Right of Dower, but the other, unde nihil habet, Regist. 3. Westm. 1. c. 48.

Is Patent. To whom directed. 2. This Writ is Patent, and is directed to the Heir of the Husband to do right to the Wife in his Court, or to the Guardian, and is removable as the other Writ of Right Patent, and in the Common Pleas the Protests is the same. The Form of the Writ is thus——

The Writ. Rex, &c. Præcipimus tibi quod sine dilacon' plenum rectum ten' *B.* quæ fuit Ux' *C.* de tertia parte & x. acr. terr. &c. in *L.* quam clam. tenere de te in dotem per liberum servitium, &c. qu' *S.* ei deforc. &c. Teste, &c. Reg. 3.

This is in Case where the Heir hath a Court, but if he have none, then the Writ of Right is directed to the Sheriff returnable into the C. Pl.

Demand in lieu of a Count. 3. In this Writ as well as the Writ Unde nihil habet, there's no Count, but a Demand, thus, viz.——A. quæ fuit Ux' T. per J. S. Attorn. suum pet. versus M. tertiam partem un. Mess. &c. cum pertinen. in W. ut dotem ipsius A. ex dotatione prædict. T. quondam Viri sui, &c. Rast. Entr. 234. b.

Defens nul. 4. Note, In Dower and Assise the Defendant makes no (Defence) but always saith (Ven. & dic.) and not Ven. & defend. &c. Rast. Entr. 232. b. More shall be said when we come to a Writ of Dower Unde nihil het', and the Pleadings I shall refer to that Chapter.

CAP.

CAP. VII.

Writ of Right *de Rationabili parte.*

1. THIS is a Writ of Right between Privies in Blood only, as between Brothers in Gavelkind, and Sisters and other Coparceners, where one of them dies and lies seised. Let us see, &c. As if the Ancestor died seised, and a Stranger abates, or the Brothers or Coparceners enter and keep out the rest, he or she so kept out, may have this Writ, F. N. B. 20. This Writ is Patent. What.

2. And if the Ancestor die seised, the Nuper obiit is the proper Remedy, and against Strangers Mortdancester, and in case of an Estate-tail, a Formedon must be brought by one Coparcener against the other, F. N. B. 22, 23. The Form of the Writ is thus—— *Nuper obiit* where the Ancestor dies seised.

Rex &c. Vic. S. salutem. Præcipimus tibi quod sine dilatione The Writ plenum rectum ten. *S.* de decem acr. terr. &c. in *B.* qu. clam. esse rationabilem partem suam qu' ei contingit de libero tenemento quod fuit *J.* patris (vel matris, fratris vel fororis avunculi vel amit' consanguinei vel consanguineæ) sui vel suæ in ead. villa & tenere de te per liberum servitium un. denar. per annum pro omni servitio qu' *A.* ei deforceat, &c. Registr. 3. b.

3. This is removeable into the Common Pleas, as others: View, Battle nor Voucher lies in this Writ, nor can the Tenant put himself upon the Grand Assise, because of the Privity of Blood, F. N. B. 22. Pl. Com. 306. Finch Law 294. Removeable into Common Pleas.

4. The Count is thus—— Unde dic' quod pd' *W.* pater, &c. fuit seisit' de integr' tenement' cum pertinen' in Dominico suo ut de feodo & jure tempore pacis tempore Domini Regis nunc capiendo inde exples' ad valenc', &c. Et de ipso *W.* patre descend' jus, &c. ist' *E.* & *A.* ut filiabus & hæredibus, &c. Qu' quidem *M.* & *A.* totum tenent & rationabilem partem pd' *J.* deforc' Et inde produc' Sectam, &c. Rast. Entr. 541. Count.

Pleadings

Pleadings in this Writ.

Non-tenure. 1. Non-tenure is no plea in Abatement in this Action. F. N. B. 22.

Defence. 2. The Defence is ven' & defend' vim, &c. Br. Defens.

Barr. 3. The Tenant may plead (as I conceive) That the Ancestor died seis'd in Abatement of the Writ, Regist. 3. b. F. N. B. 22, 23. for in that Case the Demandant ought to be have a Nuper obiit.

Barr. 4. So he may plead in Abatement, that the Ancestor had nothing in the Land, but to him and the Heirs of his Body, or some other Estate-tail; in which Case one Coparcener ought to have a Formedon against the other. Reg. & F. N. B. ibidem.

Voucher, View, Battle, Grand Assise ne gist. The Tenant cannot vouch, demand the View, offer Battle, put himself upon the Grand Assise in this Action, because of the Privity of Blood, F. N. B. ibid. Finch Law 294. Pl. Com. 306.

CAP.

CAP. VIII.

Writ of Right of Advowson.

1. AT the Common Law there were three Writs for the Recovery of the Poſſeſſion of an Advowſon or Right of Patronage. 1. The one was meerly in the Right, as a Writ of Right of Advowſon, and the other two Poſſeſſory, i. e. ultimæ Preſentationis, and a Quare Impedit, Vid. Stat. W. 2. c. 5. Co. 2. Inſt. 356. b.

At Common Law. Writs for the Recovery of the Poſſeſſion of an Advowſon or Right of Patronage. What.

2. By the Common Law, if one that had no Right had preſented by uſurpation, and his Clerk was admitted and inſtituted (which makes the Church full in caſe of a common Perſon) that had put the lawful Patron out of Poſſeſſion, and the Uſurper had thereby gain'd the Inheritance, and the rightful Patron was put to his Writ of Right of Advowſon to recover the Inheritance, but the Incumbent could not be removed: This was the Caſe of all common Perſons whatſoever, as may be ſeen at large in Boſwell's Caſe, Co. lib. 6. 49; 50, 51.

Uſurpation at Com. Law.

3. But becauſe Infants who claim'd by Deſcent, and Feme-coverts, and Perſons in Reverſion depending upon Lives or Years, as upon the life of Tenant by the Curteſie or in Dower, were many times greatly prejudic'd by ſuch Uſurpations which they themſelves could not poſſibly prevent; therefore the Stat. of Weſtminſter 2. c. 5. was made that in ſuch Caſes the Infant &c. ſhould not be put to his Writ of Right; but have ſuch Action by Quare Impedit, or Aſſiſe of Darrein Preſentment as the Anceſtor might have had. 2ly. It was provided by that Statute, that Plenarty in an Aſſiſe of Darrein Preſentment or Quare Impedit, ſhall be no Plea if the Writ were purchaſed within ſix Months next after the Church is full, i. e. after Inſtitution (as I conceive) Vid. Co. 2. Inſt. 360. This ſix Months ſhall be computed according to the Calendar, and not according to twenty eight days per menſem. Co. 2. Inſt. 361. 3ly. By this Statute Damages were given in a Quare Impedit and Darrein Preſentment, i. e. two years Value, if the Patron hath loſt his Preſent-

Stat. W. 2. c. 5.

Quare Impedit.

Six Months according to the Calendar.

ſentment by lawful Collation of the Biſhop hac vice, or otherwiſe only half a years Value, if the Incumbent be remov'd by Judgment within the ſix Months after. Co. ibidem 363.]

At Common Law, Purchaſor could not have a Writ of Right, Remedy *per Stat. W. 2. c. 5.*

4. At the Common Law a Purchaſer could not have a Writ of Right unleſs he had once preſented, but was without Remedy; but now by the ſecond Proviſion in this Statute of W. 2. he may have a Quare Impedit, if he commences it within ſix Months, Co. 2. Inſt. 358. So an Infant Purchaſer is not within the firſt, but within the ſecond Branch of the Statute of W. 2. c. 5. Vid. Boſwel's Caſe 51 b.

Of the nature of the Quare Impedit, more ſhall be ſaid in its proper place; but by theſe things premiſed, the nature and uſe of the Writ of Right may be better underſtood.

The Writ is thus——

The Writ.

Rex, &c. Vic. C. ſalutem Præcipe *A.* quod juſte, &c. reddat *B.* Advocationem Eccleſiæ de *S.* qu' ei injuſte deforc' ut dic. & niſi, &c. Regiſtr. 29.

By whom to be brought.

This Writ is always to be brought by him who is ſeiſ'd in Fée-ſimple, and not by Tenant for Life, or in Tail, but at the Common Law Tenant in Tail might have this Writ becauſe he was then Tenant in Fee-ſimple conditional. Therefore ſince the Statute de Donis Conditionalibus in Caſe of an Uſurpation the Iſſue in Tail would be without Remedy but for the Stat. of W. 2. c. 5. where the Iſſue in Tail is taken to be within the Equity of that Statute to have a Quare Impedit as well as an Infant or Feme-Covert. Vid. Boſwell's Caſe. Co. lib. 6. f. 51.

Proceſs.

The Proceſs before and after Appearance, are the ſame as in other Writs of Right Patent.

The Count is thus.

Count.

Unde dic. quod quidam *J. M.* Avus ipſius *T.* cujus hæres ipſe eſt fuit ſeiſit. de Advocatione Vicar. Eccleſiæ pd. ut de feod. & jure tempore pacis tempore Domini Henrici nuper Regis Angl. Et ſic inde ſeiſit. exiſten. ad eand. Vicar. vacantem præ-

preſentavit quend' L. L. Clericum ſuum qui ad preſentacon' ipſius G. M. fuit admiſſus inſtitutus & inductus in eadem tempore pacis tempore dict' nuper Regis Capiend' inde Exple's, ut in groſſis decimis minut' decimis oblationibus & obventionibus ad Valenc', &c. ut de jure Vicar' ſu' prædict', Et de ipſo G. M. deſcend' jus iſt' T. qui nunc per' ut Conſanguineo & hæred' prædict' G. M. videlicet fil' & hæred' prædict' R. fil' & hæred' prædict' G. M. Avi, &c. Et quod tal' ſit jus ſu' offert, &c.

5. The Tenant may Imparle, demand the View, Vouch, offer Battle, or put himſelf upon the Grand Aſſize, as in other Writs of Right. Co. Entr. 182. b. 182. a. Raſt. Entr. 103. b. — View, Voucher, Battle, Grand Aſſiſe.

6. If the Right of Tithes between Two Parſons of ſeveral Patrons, come in queſtion in the Spiritual Court, then he who is there ſued, may have a Writ called an Indicavit, which is in nature of a Prohibition to the Spiritual Judge not to proceed till the Right of the Patronage be tried in the King's Temporal Court, and then he who is prohibited may ſue a Writ of Right of the Advowſon of Tithes, and this Writ muſt be brought by the Patron of the Parſon prohibited, by the Statute of Weſtminſter 2. c. 5. for at Common Law the Parſon Prohibited was without Remedy, for the Two Parſons could not maintain a Writ of Right between themſelves. Co. 2 Inſt. 364. — Indicavit.

This Writ of Right of Advowſon of Tithes is thus.——

Rex, &c. Præcipe A. B. quod reddat C. advocacon' decimar' tertiæ partis Eccleſ' de N. vel decimar' uniuscarucat' Terr' cum pertinen' in M. &c. Regiſt. 29. — The Writ of right of Tithes

7. This Writ is to be brought to trie the Right of the Advowſon, which ought not to be tried in the Spiritual Court; and if the Patron be not ſeiſed in Fee, he cannot have this Writ, but in ſuch Caſe, the Defendant in the Indicavit, appearing upon the Attachment, may plead to the Right of Tithes in the King's Court by Conſtruction of the Statute of W. 2. c. 5. otherwiſe the Parſon prohibited were without Remedie. Co. ibidem. — Where the Parſon may plead to the Right.

Remand the Cause.

8. If the Right be tried by the Demandant, the Cause shall be remanded into the Spiritual Court, ibidem.

Indicavit, where, Stat. 9 *E.* 2.

9. By the Statute of Articul' Cleri c. 2. an Indicavit might be granted, let the value of Tithes demanded be what they would; but by that Statute made 9 E. 2. they must amount to the value of the fourth part of the Church, &c. 2 Inst. 364. F.N.B. 71.

Where useful at this day.

This Writ of Right of Advowson is now little in use, because upon an Usurpation, the Patron now by the Statute of W. 2. c. 5. has Six months after to bring his Quare Impedit, which is seldom let slip, but if he do not bring his Quare Impedit within that time, then he is put to his Writ of Right at this day, unless the Patron were an Infant, Feme Covert, &c. which are holpen by the Statute of W. 2. c. 5.

Pleas in this Action.

What cannot be pleaded as in other Writs of Right.

1. Though this be a Writ of Right, and by the Common Law cannot be brought by any, but a Tenant in Fee simple, yet the Tenant cannot plead as in a Writ of Right Patent, or other Writs of Right for Land, That the Demandant has nothing but in Tail; because in this Action the Tenant in Tail is holpen by the Equity of the Statute of W. 2. c. 5. Otherwise Tenant in Tail would be without Remedy. Boswells Case. Co. Lib. 6. 51.

Defence.

2. The Defence is in this as in other Writs of Right for Land, Rast. Entr. 103. a. Co. Entr. 181, 182. a.

Count.

3. He must alledge both Institution and Induction in the Count, or this Writ lies not. 26 H. 8. 3. Br. Droit. 1.

Grand Assise, Battle.

4. He may joyn the Mise, &c. and put himself upon the Grand Assise, or offer Battle. Rast. Entr. 103. b. Co. Entr. 181, 182. a. Dyer.

Barr.

5. He may plead in barr the same Pleas as in Writs of Right for Lands, &c. and the same as in a Quare Impedit, quod vid postea.

CAP.

CAP. XIX.

Writs of Right in their Nature,

Writs of Right in their nature.

WE have now done with Writs of Right, properly so called, there are other Writs, which are Writs of Right in their nature, which are most of them of Title not, and some of them altogether Writs; (as in practice) yet for Method and Learning sake, we shall take them before us; they are these, Viz.

Writs of Right in their nature.

1. Ne injuste vexes.
2. Nativo habendo.
3. Quo jure.
4. De Rationabilibus divisis.
5. De Recto Custodie.
6. De Consuetudinibus & servitiis.
7. Secta ad molendinum.
8. De Recto Disclami.
9. Cessavit.
10. Escheate.
11. Bre de Medio. { 1. in Remainder. } ad Com.
12. Formedon. — { 2. in Reverter. } legem per
{ 3. in Descender } Stat.
13. Bre de Dote unde nihil habet.

These are so called to distinguish them from the pure Writ of Right, which is always to be brought by him who is Tenant in Fee simple, and is for the Recovery of Lands and Possessions; but these, some of them may be brought by Tenant in Fee, for Life, or in Tail, and in others of them, neither Battle nor the Grand Assise lies, and most of them concern Relief to be had for other things, than the Recovery of the Possession of Lands and Hereditaments.

Why so called.

CAP. X.

Ne injuste vexes.

Writ. 1. This is an ancient Common Law Writ, and not grounded upon the Statute of Magna Charta, as F. N. B. supposeth; and it lay when the Tenant and his Ancestours had held of the Lord and his Ancestours by such Services, i. e. Fealty, and 2d. &c. and the Lord had obtain'd seisin of more or greater Services (as of 3d.) by the payment of the Tenant himself, and then distrained upon his Tenant for this 3d. the Tenant could not avoid this in an Avowry, because of the seisin by his own hands, but was driven to this Writ directed to the Lord. and is in nature of a Prohibition, and is Patent thus, viz.——

The Writ. Rex, &c. M. salutem, Prohibeo vel prohibemus tibi ne injuste vexes vel vexari permittas H. de libero Tenemento suo quod tenet de te in B. nec inde ab eo exigas, aut exigi permittas Consuetudines & Servitia quæ tibi inde facere non debet, &c. Co. 2 Inst. 21. F. N. B. 10.

The Process. The Process in this Writ is an Attachment and Distress against the Lord. And whn the Lord appears upon the Attachment, then the Tenant shall Count against him in the Common Pleas, and the Lord shall make Defence, and defend the wrong and force, &c. and shall plead in nature of a Count upon a Writ of Right, which Count the Tenant shall defend, and may put himself upon the Grand Assise. Rast. Entr. 57.

Two Counts in this Action, Tenant Actor. So note that in this Action there are Two Counts, and the Lord who is Tenant in the Writ, is made Actor or Demandant in the Proceeding, as in an Avowry. Vid. for all this, Rast. Entr. 437.

By whom to be brought. This Writ is to be brought by Tenant in Fee-simple. But Tenant in Tail may avoid such seisin had by the hands of his Ancestours, by Plea in an Avowry by virtue of the Stat. of Magna Charta, c. 10. So may Tenant for Life, &c. Co. 2 Inst. 21.

Battle

Battle may be offered by the Lord in this Action. F. N. B. 11. French. Battle.

Judgment final may be given in this Writ. Raft. ibidem. & F. N. B. 11. And that upon Default or Nonsuit after the Mise joyned. F. N. B. ibidem. Judgment final

Note, if the Lord Distrain for other Services, the Tenant may Traverse the Tenure in an Avowry, or if the Incroachment be gotten by Coertion of Distress. Co. 2 Inst. 21.

Pleas in this Action.

For the Count see, Raft. Entr. 437. b. Count.

The Defence by the Lord is, Ven' & defend' vim' & injur' quando, &c. Defence.

The general Barr is, Non injuste exigit præd' reddit' x s. præter præd. al' servitia quia dic' quod——And then makes a Title in nature of a Count, and so becomes Actor. Barr.

In the Replication, the Plaintiff makes defence, as the Tenant does in a Writ of Right, and puts himself upon the Grand Assise. Replication.

CAP. XI.

Nativo Habendo.

1. THis is a Writ directed to the Sheriff to deliver the Lords Villain or Bondman, who is run away from his Lord's Mannor; and the Lord must Enter a Plaint in the County Court first, as in a Replevin, which may be remov'd by a Pone into the Common Pleas, and there the Lord may Declare. Writ.

2. The

Proceſs. 2. The Proceſs is Summons, Attachment and Diſtreſs.

Libertate probanda. 3. The Sheriff cannot ſeiſe the Villain if he ſaies he is Free; but in ſuch Caſe the Lord may Remove the Plaint by Pone; or the Villain may ſue forth a Writ De libertate probanda, and then all muſt ceaſe till the Record be removed before the Juſtices in Eyre, and there the Lord may proceed. F. N. B. 186. Engliſh.

Seiſure del villaine. Stat. 25 E. 3. c. 8. 4. By the Statute of 25 E. 3. c. 8. the Lord may ſeiſe the Villain although the Libertate probanda be depending. F. N. B. ibidem.

Two to Confeſs, or Writ abate. 5. The Lord muſt have two of the Blood of the Villain ready in Court to Confeſs themſelves Villains to the Lord, and alledge the ſame in his Count, or the Writ ſhall abate. F. N. B. 189. Engliſh.

Count, &c. For the Count, Pleading, and Judgment, vid. Raſt. 436. a. b. 437.

Battle or Gr. Aſſiſe *ne giſt.* Battle, nor the Grand Aſſiſe are not in this Action.

This Writ is now much out of uſe. The laſt we have in our Books are Butler & Crutches Caſe, 11 Eliz. Dyer 283. & Dighton & Bartholomew's Caſe, 1 Jac. in Yelverton 2. and Reported by Cr. 44 Eliz. 3. part 881.

CAP.

CAP. XII.

Quo Jure.

1. THis Writ toucheth Common, and lies against a man who claims Common in Law, whereof the other is seis'd in Fee simple. The Writ is this. What.

Rex, &c. salutem, &c. Si A. fecer' &c. tunc sum', &c. B. quod sit coram Justiciar', &c. ostens' quo jure exigit Communia' pastur' in Terra ipsius A. deficut idem A. nullam habeat Commoniam in Terra ipsius B. nec idem B. servitiu' ei facias quare Communia' in Terra ipsius A. habere debeat, ut dic' non habeas, &c. Registr. 156. The Writ.

2. The Process before Appearance is Summons, Attachment and Distress, and after Appearance in Case of Default, a Grand Distress shall issue in lieu of a Petit Cape. F. N. B. English 310. Process.

3. In this Action the Plaintiff Counts, and then the Tenant makes defence, and pleads in nature of a Count in a Writ of Right, alledging seisin, and taking the Expleas, Et quod tal' sit jus su' offert, &c. And then the Plaintiff defends the Right of the Defendant and his seisin, and may either put himself upon the Grand Assise or Battle, Vid. Rast. Entr. 539. a. b. Two Counts, Tenant Actor.

4. So note, here are Two Counts, and the Defendant in the Writ becomes Actor in the Proceedings, as in Replevin and the Ne injuste vexes before. Two Counts.

5. Summons and Severance lies in this Writ, and several may be joyned in this Writ, but they must make several defences, and put themselves severally upon the Grand Assise. F. N. B. 310. Engl. Summons, & Severance lies.

This Writ is out of Use likewise, for Actions of Trespass, and upon the Case are now generally used for the deciding the Right of Commons.

Pleas in this Action.

Count, &c. A to the Count, Barr, Replication, how the Defendant is become Actor, vid. antea.

Barr. The Defendant may plead in Barr Common by prescription, appurtenant to a Tenement. Rast. Entr. 539. b.

Replication. In the Replication, the Plaintiff makes defence as in a Writ of Right, and says the Land is Solum suum separale, and Traverseth the Prescription, and then puts himself upon the Grand Assise. Rast. ibidem.

So note a Traverse of the Defendant's Plea and joining of the Mise, &c. in one and the same Plea.

CAP. XIII.

De Rationibilibus divisis.

Where lies. 1. THis Writ lies where Two Men or more are seis'd of Lands in several Townships, the Lands in one Township being to one, and the Lands in another, being to the other, and there is a difference how far the several Townships extend, and therefore to have a reasonable Division by Metes and Bounds, this Writ was used. This Writ is directed to the Sheriff, and determinable before him, as a Replevin, but may be remov'd into the Common Pleas by Pone. Vid. F. N. B. 311. English. The Writ is as follows.——

The Writ. Rex, &c. Præcipimus tibi quod juste & sine dilacon' facias esse rationabiles divisas inter Terram A. B. in C. & Terra' S. de K. in S. sicut esse debent & solent unde idem B. queritur quod prædict' S. plus inde trahit ad feodum suum, quam ad ipsum pertinet hend' ne amplius inde clamorem, &c. pro defectu recti. T. &c. Regist. 257.

This

This Writ is to be brought only by Tenant in Fee-simple, and the Process is Summons, Attachment, and Distress, and upon default after Appearance, division shall be made according to the Demandants Count, without any further Process as I conceive. Vid. the Count, Rast. Entr. 541. where after the Bounds set forth, the Demandant sets forth in his Count the seisin of the Land incroached, and the taking of the Expleas, as in a Writ of Right. The Mise may be joyned by Battle or the Grand Assise. F. N. B. 311. Engl. Rast. Entr. 541, 542. This Writ is now much out of use. For the trial by Ejectione Firm' will ascertain the Bounds of Townships by Witnesses. By whom to be brought.

Pleas in this Action.

If there be several Demandants, the Tenant must make his defence severally, and may joyn the Mise by Battle or Grand Assise. F. N. B. 129. French. Several defence by several Defendants.

Joynt-tenancy or Coparcenery is a good Plea in Abatement to this Writ. F. N. B. ibidem. View, Summons, and Severance lies in this Writ. ibidem. Joynt-tenancy or Coparcenary *nul* Plea.

CAP. XIV.

Bre' de Recto Custod' Terr' & hæredis, De Consuetudinibus & Servitiis, Sur Disclaimer, Cessavit, Escheate, & De Medio.

These Writs were of use when Wards and Tenures were in Force and Practice, but now all Tenures being turn'd into Common Soccage, and the Court of Wards and Liveries being abolish'd by the Statute of 12 Car. 2. c. 24. these Actions are now out of Use, and therefore I have Couch'd them all into one Chapter, and shall do little more than declare the nature of them severally, and in what Case they lay. These Writs, when in Use.

Note in general, That it is held as a Rule in Law, that in Writs of Right which concern the Seignory, neither Battle nor the Grand Assise lay. Br. Droit. 34.

What. 1. De Recto Custod' Terr' & hæredis. This Writ was provided for the Lord in Knights Service, where his Tenant died in his Homage, and a Stranger Entred into the Land and took the Body of the Heir, he might have this Writ to recover the Land and the Heir. F. N. B. 139. Fr. Or he might have his Writ de Custod' hæred' only, if the Heir were detained, ibidem. Or Custod' Terr' only, if the Land were only withheld, ibidem. See the several Writs there in F. N. B. Of a Writ of Ravishment of Ward, of Intrusion against the Ward, Ejection' Custod' by Guardian in Soccage and Guardian in Chivalry, &c.

What. 2. De Consuetudinibus & Serviciis. This is a Writ of Right in its nature for the Lord against his Tenant, who withholds from him the Rents and Services usually due to the Lord for the Land. F. N. B. 151. Fr.

Returnable into *Common Pleas.* This Writ may be sued returnable into the Common Pleas, and directed to the Sheriff, or it may be sued in the County by Justices, ibidem.

The Writ. See the Writs there, Præcipe A. quod faciat, &c. Consuetud' & servitia qu' ei facere debet, &c.

Debet & Solet. The Writ is in the Debet & solet, when he Counts of his own seisin. F. N. B. 151. b. but in the debet when of the seisin of his Ancestour, ibidem.

Several Tenants may be sued by one Writ, by several Præcipes, 151. ibidem.

By whom to be brought. This Writ may be brought both by Tenant in Fee simple, and by Tenant for Life or in tail; and the Writ is Close, ibidem. And the Mise may be joyned and put upon the Grand Assise, ibidem.

Count Vid. The Count, Rast. Entr. 143. b. The Tenant may disclaim if he will. F. N. B. ibidem.

3. Writ

3. Writ of Right upon Disclaimer. This is no particular Writ of Right upon an ancient Right, but a Writ of Right Patent grounded upon a Disclaimer, and lies where the Tenant does disclaim upon Replevin to hold the Land of his Lord; as in Replevin, if the Lord avow for Rents and Services, and the Tenant disclaims in his bark to the Bailiff, the Lord loses the Services, and Judgment shall be forthwith given against him; and then the Lord may bring his Writ of Right for the Land. See Rast. Entr. 224, 225. The Writ remov'd from the Lord's Court to the County, thence into the Common Pleas; the Count, and the Mise joyn'd, and the Grand Assise,——And then the Pannel of the Grand Assise Return'd by Four other Persons for want of Knights. 225. b.

What.

4. Cessavit, this Writ lies where there is Lord and Tenant, and the Tenant pays not his Rent and Services, but ceases for Two years, and there be no sufficient Distress upon the Land, then the Lord may have this Writ to Recover the Land by the Statute of Westminster, 2. c. 21. And it lies where a Tenure is created by Deed or without Deed, and a Fee-farm be reserv'd, if the Tenant cease to pay the Rent for two years, and no Distress be upon the Land sufficient, and this by the Statute of Glocester, c. 4. Vid. F. N. B. 208. b. Fr. Co. 2 Inst. 295. & 400.

Where it lies.

There must be a Tenure in Fee, or the Cessavit lies not, Co. 2 Inst. 296. therefore it lies not against Tenant in tail, or for Life, ibidem. But lies for a Tenant for Life, as Tenant in Dower, per le Curtesie. F. N. B. 209. a.

There must be a Tenure in Fee.

Before Judgment, after Verdict, or Default, at the Return of the Petit Cape, if the Tenant tender all the Arrears, and give Surety to pay the Rent, and perform the Services for the future, as the Court shall award, he shall be receiv'd. This must be done in Person, and the Sureties bind their Lands to the same Services. F. N. B. ibidem. & Co. 2 Inst. 297. Rast. Entr. 112. a.

Tenant to be receiv'd, *si tend'* Arrearages and find Sureties.

Vid. the Writ F. N. B. 208. Præcipe E. quod reddat, &c. qu' idem E. de eo tenet per certa Servitia, &c.

The Writ.

The

Tenure traverſable. The Tenure is traverſable, but not the Seiſin, Co. 2. Inſt. 296.

Bar. *quod non ceſſit.* That he did not ceaſe for two years before the Writ purchaſed, a good Plea. F. N. B. 209. a.

Judgment final may be given in this Writ. 2 Inſt. 298. Raſt. Entr. 112. a. Keilw. Rep. 75. b.

Bar qu' le terr' fuit liable & overt al ſufficient Diſtreſs. And it's a good Plea that the Land was overt and ſufficient to the Diſtreſs of the Lord, at the time of the Writ brought. F. N. B. ibidem. Raſt. Entr. 110. See there the Count, Barr, &c. 110, 111, 112.

The Proceſs is Grand Cape & Petit Cape.

Ceſtr. 35 E. 3. In 35 E. 3. there's an Original brought in Ceſſavit in the Court of the County of Cheſter, or County Court, by Robert the Son of Ric. of Foulsehurſt, againſt John the Son of Henry Samyn of an Houſe in Wico Mabbano. Teſt. Bartholo' Burgerſh Juſtic' Ceſtr' ix. Julii 35 E. 3. Returnable ad prox' Com' Ceſtr'.

The Writ it ſelf is in theſe words.——

Ceſtr. Writ 35 E. 3. Edwardus illuſtris Regis Angliæ Filius, Princeps Walliæ, Dux Cornub' & Comes Ceſtr. Vic. Ceſtr' ſalutem, Præcipe Johanni Fil' Henrici Samyn quod juſte & ſine dilacon' reddat Roberto Filio Ric' de Fouleſhurſt unum Meſſuagium cum pertinen' in Wico Malbano, quod Henricus Samyn Pater prædict' Johannis cujus hæres ipſe eſt, tenuit de Rico' de Fouleſhurſt, patre præd' Roberti cujus hæres ipſe eſt per certa Servitia, & quod ad prædict' Robertum reverti debet per formam Statut' de coi' Conſilio Regni Angliæ inde provis' eo quod prædict' Johannes in faciendo prædict' Servitia per bienniu' jam ceſſavit, ut dic' Et niſi fecerit & prædict' Robertus fecerit te ſecurum de clamore ſuo pros' tunc ſum' per bon' ſum' præd' Johannem quod ſit ad prox' Com' Ceſtr', oſtens' quare non fecerit, Et habeas ibi ſum' & hoc Bre' T. Bartho' de Burgerſh Juſtic' noſtr' Ceſtr' apud Ceſtr. xi. die Julii, Anno Regni Domini Edwardi Regis Patris noſtri triceſimo quinto. (Recuperet ſeiſinam) at the bottom of the Writ.

Thom' le Young Vic Ceſtr.'

Note

Note, this Writ is T. the Justice of Chester, though it be an Original Writ, which I wonder at. For now they are all T. meipso.——

5. Escheat, Is a Writ for the Lord where his Tenant dies without Heir, that was seis'd of Lands in Fee simple, in such Case the Lord shall have this Writ to recover the Land in lieu of his Services. F. N. B. 143. Fr. Where it lies.

And the Tenant may die without Heir in three Cases. 1. In Fact, where no Person is known. 2ly. In Law where the Tenant was a Bastard. 3ly. In Case of Forfeiture, where the Tenant is attainted of Felony. In these several Cases there are several Writs of Escheat. For Example in Case of Bastardy. Vid. F. N. B. 144 a. How a Man may be without Heir in 3 Cases.

Præcipe A. quod reddat B. un' Mess' &c. qu' C. de eo Tenuit & quod ad ipsum B. reverti debet tanq' Escheata sua eo quod B. C. Bastardus fuit & obiit sine hærede ut dic' &c. The Writ.

If Tenant in tail die without Heir, then the Lord shall not have a Cessavit, but a Formedon in Reverter, but if the Remainder in Fee be in the Tenant in tail, and he die without Heir, the Lord shall have the Escheat, because the Tenant in tail was Tenant to the Lord for the Fee simple. F. N. B. 144. b. Where not a Cessavit but a Formedon.

In Case of Treason, the King shall have the Lands whosoever is Lord. Co. 2 Inst. 64. Treason.

Now all Tenures are turn'd into Common Soccage, if one commit Felony, or be a Bastard, &c. Quer. to whom the Land shall Escheat, whether to the Lord of whom the Land was formerly held, and now held in Common Soccage, or to the King; and I conceive to the Lord of whom it is now held in Common Soccage, as by paying some Rent, or doing some other Service, &c. for these Rents and Services are still preserv'd by the Statute of 12 Car. 2. c. 24. But if it be not known of whom the Land is holden, then the King as the Great and Chief Lord, shall have the Land by Escheat. All Tenures now Common Soccage per Stat. 12 Car. 2. c. 24.

The

Proceſs. The Proceſs in this Action is Grand Cape and Petit Cape. F. N. B. 144. b.

Eſcheat triable in Ejection' Firme. The Title of Lands now by Eſcheat, (I conceive) may be tried in an Ejection' Firme; if he who has Title Enters in due time. But if he do not Enter of 20 years after, Quær. if he may not then have this Writ, and I conceive he may, for Soccage-tenure is a Tenure.

Commiſſion for the King. Where the King is to be Intitled by Eſcheat for Felony, there is to iſſue out a Commiſſion to ſeveral Perſons to inquire what Lands the Perſon was ſeis'd of, of what yearly value, and of whom holden, &c. F. N. B. 144. b.

By whom may be brought. This Writ of Eſcheat may be brought by Tenant for Life of a Seignorie. F. N. B. 144. b.

What. 6. Medio. This is where there is Lord Paramount, Meſne Lord, that is, middle Lord, and Tenant peravaile, that

Where it lies. is, the Tenant that takes the Profits, and the Meſne holds of the Chief Lord, by the ſame or greater Services, (as xx s. Rent, &c.) as the Tenant peravaile holds of the Meſne, if the Meſne ſuffer the Tenant to be Diſtrained upon for the Rent which he ſhould pay to the Chief Lord, the Tenant ſhall have this Writ againſt him, and Recover his Damages, and have Judgment againſt the Meſne that he ſhall acquit him. F. N. B. 135. b. Raſt. Entr. 434. a. Co. 2. Inſt. 375.

The Writ. The Writ is,——Præcipe A. quod juſte, &c. acquietet B. de Servitio quod C. ab eo exigit de libero Tenemento ſuo, quod de præfat' A. tenet in L. & unde Quer' quod pro defectu ejus diſtringitur ſicut rationabiliter monſtrar' poterit quod eum acquietar' debeat ne amplius, &c.

Who may bring it. Tenant in tail, in Dower, or by the Curteſie, may have a Writ of Meſne. F. N. B. 136. a. b.

Where not to Abate. The Writ of Meſne ſhall not Abate by the death of the Lord Paramount, 4 H. 6. 28. F. N. B. 136. b.

The

The Proceſs at Common Law was Summons, Attachment, and Diſtreſs infinite; but now by Stat. of Weſtm. 2. c. 9. Summons, Attachment and the Grand Diſtreſs; and if he appear not at the Return of the Grand Diſtreſs, (which muſt have ſo long time of Return as two County Courts may be held, ſo as the Sheriff may make Proclamation for the Meſne to appear) The Meſne ſhall be forejudg'd of his Meſnalty, i. e. he ſhall loſe the Service of his Tenant, and the Tenant ſhall be only Attendant upon the Chief Lord. Vid. le Stat. W. 2. c. 9. Co. 2 Inſt. 374, 375. See Raſt. Entr. The Diſtreſs, Proclamation, and Forejudger. 434. b. Proceſs. Attachment & Grand Diſtreſs per Stat. W. 2. c. 9. Forejudger.

Not Diſtrained in his Default, is the Common Plea in this Action. Raſt. Entr. 433. b. F. N. B. Barr.

For the ſeveral ſorts of Acquittal, vid. Co. 2 Inſt. 373.

CAP. XV.

Secta ad Molendinum.

IS a Writ that lies for a Man when one that owes Suit to his Will, that is, that ought to Grind his Corn at his Will either by virtue of Preſcription or Tenure, and withdraws his Suit, then he may Compel him by this Writ. F. N. B. 295. What.

2. This Writ is either Vicontiel, or may be brought in the Common Pleas. F. N. B. ibidem. Quotuplex.

3. It may be brought by a Tenant for Life or in Dower. 296. F. N. B. By whom.

4. The Proceſs is Summons, Attachment, and Diſtreſs, and if he make Default after an Appearance, a Diſtringas in nature of a Petit Cape ſhall iſſue, and if he cannot ſave his Default, Judgment ſhall be given againſt him. F. N. B. 296. Proceſs.

Debet & ſolet. 5. If the Demandant have been ſeis'd of the Suit, then the Writ is in the debet & ſolet, but otherwiſe in the debet which ſavours of the meer Right.

View. 6. View lies in this Writ of the Mine or Land where the Mills ſtands. F. N. B. 296.

The Writ is thus.——

Original. Rex, &c. Vic' ſalutem, Præcipe A. quod juſte & ſine dilacon' faciat ſectam ad molendinum E. in C. quam ad illam facere debet & ſolet, ut dic', Et niſi, &c. Regiſtr. 153.

The Count.——

Count. Unde dic' quod prædict' A. facere debet & ſolet ſectam ad molendinum præd' de omnibus bladis creſcen' in C. acr' Terr' in eadem Vill' ſcilicet molendi omnia blada præd' ad viceſimum vas de qua ſecta idem E. fuit ſeiſit' per manus præd' A. ut de feodo & jure tempore pacis tempore, &c. Capiend' inde Exples' ad valenc' &c. quouſque præd. A. per quinque Annos ante diem impetracon' bris' ipſius E. ſcilicet die Anno &c. præd' ſectam ei ſubſtraxit, Unde dic' quod deteriorat' eſt, Et damn' het', &c. Et inde produc' ſectam', &c. Raſt. Entr. 591. b. vid. Co. Entr. 641. By Preſcription againſt one as an Inhabitant within his Manor.

Judgment. The Judgment is to recover the (Suit) and Damages aſſeſſed by the Jury and Coſts. Co. Entr. ibidem. 16, 17 Eliz.

Pleas in this Action,

Count. The Declaration muſt alledge a ſeiſin of the Suit by the hands of the Tenant or his Anceſtours. Raſt. Entr. 591. b. Againſt Inhabitants within a Manor, the Count by Preſcription. Co. Entr.

Barr. The Tenant may plead, That the Demandant was not ſeis'd per manus, &c. prout, &c. niſi ex ſpontanea Voluntate præd' L. &c.

Hors

Hors de son Fee, is no good Plea. 17 E. 3. 64. Fitz. Abr. Hors de son Fee 22.

CAP. XVI.

A *Formedon* in general.

1. A Formedon is a Writ so called a Forma donationis, because the Form and manner of the Gift is set forth in the Writ, and is a petitary Writ for an Issue in Tail, or for him in Remainder or Reversion, to Recover the Possession of Lands and Tenements, or Hereditaments, when the Estate tail is discontinued, and the Remainder or Reversion displac'd and turn'd into a Right. Vid. Stat. W. 2. c. 1. Co. 1 Inst. 327. F. N. B. 527, 528. What.

2. And this is the Writ of Right of the Issue in tail, for he can have no higher Writ. Co. 1 Inst. 326. b. ¶. 2. Inst. 291. a. For Tenant in tail cannot have a Writ of Right sur Disclaimer, nor a Quo Jure, nor a Ne injuste vexes, nor a Nuper obiit, or a Rationabil' parte, nor a Mortdancester, nor a Sur cui in vita, for none but Tenant in Fee shall have them. Co. 1 Inst. 327. b. ¶. But a Writ of Entry in Casu consimili or in Casu proviso he may have. Co. ibidem. 512. 514. and some other Writs relating to the Seignory, as Cessavit, Escheat, Waste, &c. and the like. Co. ibidem. Is a Writ of Right in its nature.

3. There are three kind of Writs of Formedon. 1. In Descender, to be brought by the Issue in tail, who claimeth by Descent secund' formam Doni. 2. In the Reverter, for him in Reversion after the Estate tail spent. 3. In the Remainder, for him in the Remainder, his Heirs or Assigns after the determination of the Estate tail, or other particular Estate upon which the Remainder depended. Co. 1 Inst. 326. b. ¶. Quotuplex. Descender.

1. The first of these is given by the Statute of W. 2. c. 1. de Donis Conditionalibus, and the Form is there set down. Co. 2. Inst. 336. Pl. Com. 240. But at Common Law in one special

special Case there was Formedon in discender. Vid. Pl. Com. 234. b.

Reverter. 2. The Second, in Reverter lay at Common Law after the determination of the Estate tail, which was then an Estate in Fée-simple Conditional. Pl. Com. 235. a.

Remainder. 3. The last, in Remainder, was before at Common Law in some Cases, as upon an Estate for Life, but not upon an Estate tail, because no Remainder could be limitted upon it at Common Law because it was a Fée-simple; but after the Statute a Remainder may. Co. 2 Inst. ibidem.

4. To prevent deceits between the Demandants and Tenants that the Rights of Strangers might not be lost, Proclamation anciently was made before judgment, upon Confession or Default in a Formedon. 33 H. 6. 34. a. and that remarkable Case. 7 H. 4. 19. b. Fitz. abr' tit. Proclam. 14. Br. 2. Pl. Com. 358. a.

CAP. XVII.

Formedon in Descender.

What. 1. This Writ is given by the Statute of W. 2. c. 1. and lieth where a gift is made to a Man and the Heirs of his Body begotten, or to a Man and a Woman and the Heirs of their two bodies begotten, or where any other Estate-tail is made or limitted, and the Donee being seised, alieneth the Lands by Feoffment, &c. or disseised of them dieth, his Heir shall have this Writ of Formedon to recover the Lands given in Tail. F. N. B. 527.

Tail, Feesimple at Common Law. 2. At the Common Law, that which is now by the said Statute called an Estate-tail, was a Fée-simple Conditional, and before issue had, the Donée might have Alened by Feoffment and have barr'd his issue, but not the Donor or his Heirs, but after issue, he might have Alened and barr'd both his Issue and the Donor for ever. Co. 2 Inst. 333. Pl. Com.

Bever-

Beverlyes Caſe. Co. 1 Inſt. 19. Litt. Sect. 13. At Common Law the Iſſue might have had a Mortdanceſter. Pl. Com. 239 b.

3. Now by the Statute of W. 2. It is provided, quod non habeant illi quibus Tenementa' ſic fuer' dat' ſub Condicon' poteſtatem alienandi Tenement' ſic dat' quo minus ad exitum illorum quibus Tenement' ſic fuer' dat' remaneat poſt eorum obitum, vel ad ejus hæred', (ſi exitus deficiat) revertatur, &c. *W. 2.*

4. And in Caſe of ſuch Alienation, the ſame Statute has ſet down the Form of the Writ for the Iſſue in Tail, i. e. this Formedon in Deſcender; where the Alienation was by Feoffment whereby the Eſtate-tail was diſcontinued, (which diſcontinuances were not by Conſtruction of Law reſtrain'd by the Words (Poteſtatem alienandi) for many ſound and excellent Reaſons) which you may read in Co. 1 Inſt. 327. a. b. Co. 2 Inſt. 335. But in ſome Caſes, Alienations may be avoided by Action Entry or Claim, at the Election of the Iſſue in tail, and ſome are meerly Void. Co. 1 Inſt. 327. b. Form of the Writ by Stat. *W.* 2. in caſe of Alienation.

Only in one Caſe it's ſaid, a Formedon in Deſcender lay at Common Law. Vid. Pl. Com. 239. b. Lord Barkley's Caſe.

The Writ is thus.——

Rex, &c. Præcipe *A.* quod juſte & ſine dilatione reddat *B.* Maner' de *N.* cum pertinen' quod *C.* dedit *D.* & hæredibus de corpore ſuo exeuntibus & quod poſt mortem prædict' *D.* præfat' *B.* fil' & hæred' ejuſdem *D.* deſcendere debet per formam donationis pd' ut dic' Et niſi, &c. Regiſtr. Origin. 238. b. Original.

This

Descent. **This Writ is for the first and immediate Issue in Tail, when Land is given to a Man and the Heirs of his Body. There are other Forms according to the particular Case of the Demandant, which you may see in the Register.**

Pedegree.

Amicia dedit

Amiciæ filiæ ejus.

Willielmus.

Ranulphus filius — Alicia filia

Willielmus **Demandant.**

If Lands be given by the first Amy to Amy her Daughter and the Heirs of her Body, and Randle is last seized, and dies without Issue; now the last William has a Title to the Land, as Heir to his Uncle Randle: The Formedon is thus—— As by a Writ 34 E. 3. In Castr. Cestr. coram Justic. Cestr.

Viz.

Chestr' Original. *E* 3. Edwardus illustris Regis Angliæ filius Princeps Wall' Dux Cornub' & Comes Cestr. Vic. Cestr. salutem Præcipe Willielmo fil' Ricardi del Hogh quod juste & sine dilatione reddat Willielmo de Hatton unum Mes. & decem acr' terr' cum pertinen' in Wistaston qu' Amicia de Wistaston dedit Amiciæ filiæ suæ & hæredibus de corpore suo exeuntibus Et qu' post mortem pd. Amiciæ filiæ Amiciæ & Willielmi filii & hæred' ejusdem Amiciæ filiæ Amiciæ & Ranulphi filii & hæred. pd. Willielmi filii Amiciæ & Aliciæ sororis ejusdem Ranulphi præfato Willielmo de Hatton filio prædict. Aliciæ & consanguineo & hæred. prædict. Ranulphi descendere debent per formam donationis prædict. ut dic' Et nisi fecerit & pd. Willielmus de Hatton fecer' te securum de clamore suo prosequend' tunc sum' per bon' sum' pd. Willielmum fil' Ric'i qd. sit ad proximum Com' Cestr' ostens' quare non fecerit Et habeas ibi sum' & hoc

Bre'

Bre' T. Batthol' de Burgeher Justic' nostr' Cestr' apud Cestr' xxii. die Octobr. Anno Regni Domini Edvardi Regis patris mei xxxiv.

Pleg' de Pros' { Hugo de Boydhull. / Robertus Cote.

Thomas le Young Vic. Cestr. ad istud Bre' respond', istud Bre' adeo tarde ven' quod exequi non potuit.

Then a Voucher is endors'd thus, viz.——

Ten' ven' & voc' ad Warr' Ch. fil' & hæred' Richardi del Hogh & habeat, &c.

1. Note, In this Writ of Formedon for a Rule that the Demandant must always make himself Heir to him who was last seised, as you may observe by this Writ, Alice the Mother was never seis'd, and therefore he makes himself Heir to his Mothers Brother. F. N. B. 530. Engl. — Demandant must be Heir to him last seis'd.

2. Note, That the Ancestours that were seis'd, must be named in the Writ, and named (Son and Heir) F. N. B. 528. as by this Writ, but if any were not seis'd, such need not be named (Son and Heir) or (Elder and Heir) as if the eldest Son die before any Entry, he need not be named (Son and Heir) as here (Alice) in this Writ is not named Heir, F. N. B. 529. Buckmeir's Case. Co. Lib. 8. 88. b. — The last seis'd to be named Son and Heir.

3. Such as were never seis'd, nor Right descended to them, as if the eldest Son die before the Father, without Issue, need not be named at all, Co. ibid. 46 E. 3. 9. — He never seis'd needs not to be named.

4. Note, The Clause (Et qu' post mortem) hangs in the Descent; but in this Writ there is no Clause (Eo quod, &c.) but that is only proper when the Estate tail is spent in a Formedon in Remainder or Reverter. Co. ibid. — Clause (*eo qd'*) not in this Writ. NB

The Process is Sum' Grand Cape before Appearance, and Petit Cape after Appearance. Rast. Entr. 368. b. 369. a. — Process.

Upon the Return of the Grand Cape the Tenant may wage his Law of Non-summons for which and the manner of proceedin[g]

ceeding, ïæ before Default, Grand Cape, Petit Cape. Raſt. Entr. 368. a.

Eſſoin. Upon the Return at the day of Appearance upon the Original the Tenant may Eſſoin. Vid. antea Eſſoin.

At the Eſſoin-day the Tenant ought to appear, or a Grand Cape is awarded againſt him. Vid. Raſt. Entr. 369. a.

When to count. Upon the Tenant's Appearance the Demandant ought to Count; and the Count is as various as the Writ, according to the particular Circumſtances of the Caſe; but according to the Caſe of the Writ herein before-mentioned, the Count ought to thus, viz.———

Count. Willielmus de Hatton pet' verſus Willielmum fil' Richardi del Hogh un' Meſ. &. qu' Amicia de Wyſtaſton dedit Amiciæ filiæ ſu' & hæred' de corpore ſuo exeun' Et qu', &c. (as in the Writ till ut dic') Et unde dic' quod Amicia de Wyſtaſton dedit præd' Meſ. & predict. decem acr' terr' cum pertinen' præfat. Amiciæ fil' ſuæ & hæredibus de corpore ſuo exeuntibus in forma pd' virtute cujus doni Amicia fuit ſeiſit' de Meſ. & decem acr' terr' prædict' cum pertinentiis in Dominico ſuo ut de feodo & jure per formam, &c. tempore pacis, &c. tempore, &c. capiend' exples' ad valenc', &c. Et de ipſa Amicia fil' pd. Amiciæ de Wyſtaſton deſcend' jus, &c. cum pertinen' per formam, &c. cuidam Willielmo ut fil' & hæred' ejuſdem Amiciæ fil' Amiciæ & de ipſo Willielmo deſcend' jus, &c. cum pertin' per formam, &c. cuidam Rano' ut fil' & hæred' prædict' Willielmi & de ipſo Rano' deſcend' jus, &c. per formam, &c. iſt' Willielmo qui nunc pet' ut conſanguin' & hæred' prædict' Ran'i ſcilicet fil' pd' Aliciæ ſoror' prædict' Ran'i fil' Willielmi fil' Amiciæ filiæ Amiciæ de Wyſtaſton, &c. Et qu' poſt mortem, &c. Et inde produc' ſectam, &c.

He never ſeis'd, not named Heir. Note here, That it appears by the Writ, that Alice was never ſeis'd, becauſe ſhe is named (ſororis Ran'i) and not (ſororis & hæredis) therefore the Count muſt make the Demandant Heir to Randal, who was laſt ſeis'd, and the Right deſcend from him, becauſe he was the perſon that made the Diſcontinuance, or was diſſeiſed, or after whoſe Death an Abatement was made by the Tenant; for by the Writ it appears all were ſeis'd but Alice, for they are all named (Son and

and Heir) Vid. Rast. Entr. fol. the Counts in Formedon en Descender. 365-a. b. Co. Entr. 326, 327, 328.

Note, it's said in the Count always that (descend' jus) though the Ancestour died seis'd, as de B. (descend' jus) al C. de C. descend. jus al N. & de N. descend. jus ist' peten. ut fil. & hæred. &c. Co. Entr. ibidem. The Reason of this is (as I conceive) because it is not material whether the Ancestours after the first were actually seis'd or not, so as a Right did descend, and the Demandant make himself Heir to him who last died seis'd, or to whom the Right did last descend.

Descend' jus, Though the Ancestour died seis'd.

But that Ancestour that never had any Right descended to him, needs not be mentioned in the Writ or Count.

Who had never any Right descended, needs not be named.

As suppose there be Grandfather, Father and Son; and the Grandfather dyes, and the Father dies in the life of the Grandfather, and the Son is to bring his Formedon: He may say in his Writ thus,——Et qu' post mortem A. B. le Aiel fil' & hæred' A. eidem C. le Fitz fil' L. fil' B. fil' A. ut Consanguineo & hæredi præd' B. descendere debet. And not qu' post mortem A. & B. fil' & hæred' A. & L. fil' ejusdem B. fil' A. eidem C. fil' & hæred' L. fil' B. & hæred' A. descendere debet. So in the Count L. the Father may be left out thus,——Et de A. descen' jus B. ut fil' & hæred', Et de B. descend' jus ist' C. modo Peten' ut Consanguineo & hæred' ipsius B. scilicet fil' L. fil' B. fil' A.

Example.

Note. The Demandant may have one Formedon upon several Gifts, Cr. 2. P. 329.

When the limitation of this Action and all other Formedons were 50 years by the Statute of 32 H. 8. in the Count, when they came to the Ancestour that was seis'd within the 50 years, it is sometimes Counted thus—— Et de ipso A. descend' jus &c. B. Qui quidem B. seisit' fuit de Tenement' præd' cum pertinen' in dominico su' ut de feodo & jure tempore pacis tempore H. 8. infra 50 Annos jam ultime Elaps' capiendo inde Exples', &c. Co. Entr. 325, 326. &c.

Stat. of Limitation 32 H. 8.

Now the Limitation is within 20 years next after the Title accrued, by the Statute of 21 Jac. c. 16.

Stat. 21 Jac. c. 16. of Limitation.

Imparlance, View. After the Count the Tenant may Imparle, and after Imparlance, demand View, which at Cheſter is but de die in diem, but at Weſtminſter, Nine Returns between the Teſte and the Return, Co. 4 Inſt. 567. Dyer 252. Dyer 210. Vid. View antea Raſt. Entr. For the Return days of mean Writs now, vid. 16 Car 2. c. 6.

Eſſoin after View. And upon Return of the Writ of View, the Tenant may be Eſſoined again. Vid. Eſſoine antea f. 19. And the Demandant muſt adjourn the Eſſoine 15 days at Weſtminſter, but in Cheſter, but one day.

Aid, Voucher. Aid, Voucher, Receit, lies in this Action, and all other Formedons.

Judgment. The Judgment is, ——Ideo Conſideratum eſt quod B. recuperet ſeiſinam ſuam verſus præd. C. de Meſſ. &c. cum pertinen. & præd. C. in mia. &c.

I ſhall conclude this Chapter with a Record in the time of H. 5. in the Court of the County before the Juſtice of Cheſter, wherein you have the Demurrer of one within age, a Counterplea, a Waver of a Counterplea, and then the Tryal of the Age by Inſpection of the Court. According to the Rules before f. 53. and 65. And one other Record in the time of H. 4.

Record. *Ad Com. Ceſtr. coram Gilberto Domino de Talbot Juſtic. die Martis proxim. poſt Feſtum St. Lucie Virginis Anno W.* H. 5. 3.

Ceſtr. ff. Willielmus Brereton Chivaler, pet. verſus Nichol. fil. Rogeri de Mouldſworth unum Meſſ. unam bovat. Terr. & medietat' un. acr. prat. cum pertinen. in Tervin qu. Simon de Blaſten & Johanna Uxor ejus deder. Willielmo de Brereton ſen. & Roeſie Uxor' ejus & hæred. de Corpore eorund. Willielmi ſen. & Roeſie exeun. &c.

Count.

Voucher Infant. Et præd. Nichol. in propria perſona ſua ven. & defend. jus ſu. quando, &c. Et voc' inde Warr. Johan' de Huxley & Elena. Uxor' ejus, Conſanguin' & hæred. Margerie qu. fuit Uxor præd. Nichol. cujus hæres ipſa eſt ſum. in Com. præd. per auxilium Cur. &c. ad Warr. verſus eum, &c.

Qui

Quæ quidem Ellena est infra ætatem, &c. Et pet' quod loquela illa remanr' sine die usque plenam ætatem ipsius Ellenæ, &c.

Et prædict. Willielmus dic' quod prædict. Nichol' ad hujusmodi vocare ad warr', &c. admitti non debet quia dic' quod pd' Ellena aut aliqu' antecessor' nihil habuer' in eisdem tenement' cum pertinentiis in Dominico, in servitio, nec in reversione ante diem impetrationis Bris', &c. Et pet' quod inquiratur per patriam & Nichol' similiter. The Venire is continued per Vic' non mis' Bre', and then upon the Return of the Venire the Demandant waves his Counterplea, and admits the Voucher thus—— Et prædict Willielmus per Attornatum suum pd' reliquit verificare su' prædict' & admisit vocare pd' sed dic' quod loquela illa remanere non debet quia dic' quod præd' Ellena est plenæ ætatis, &c. Et pet' quod prædict' Ellena per Cur' hic videatur, &c. per quod præceptum est Vic' quod Venire fac' coram Justic' hic ad prox' Com' scilicet præd' Ellen' ut per aspectum corpor' sui constare poterit Cur' hic si sit plenæ ætatis nec non, &c. Idem dies dat' est partibus prædict. hic &c. The Venire is continued by Vic' non misit Bre' till ad Com'—— Ad quem diem ven' partes prædict', &c. ac etiam prædict' Ellena in propria persona sua & per aspectum corpor' prædict' Ellenæ hic in Cur' per Justic' & Judicator' Cur' prædict' consideratum est quod prædict' Ellena est plenæ ætatis, &c. Idoo, &c. Then goes out a Summons ad warr', &c.

Counterplea de Voucher.

Waver de Voucher.

Inspection.

Trove plenæ ætatis.

There's another remarkable Record in the 8th of H. 4. where in a Formedon in the descender the Tenant vouches, and the Vouchee summon'd, and Process to the (sequatur sub suo periculo) and he appears, vouches over with the like Process, and the second Vouchee appears and vouches over a third: which Voucher is counterpleaded, and the Return of the Venire waved, and then Process against the third Vouchee, as before the Record in part hereafter follows, for the whole Record is a long Roll, but what is material I shall set down in hæc verba.——

Record 8 H. 4. Cestr.

Recvd. 8 H. 4.

Adhuc de Placitis Com' Ceſtr' apud Ceſtr' coram Gilberto *Domino de* Talbot *Juſtic' Ceſtr' die Martis prox' anté Feſtum Nativitatis beatæ* Mariæ *Virginis Anno Regni Regis* Henrici *quarti poſt Conqueſtum octavo.*

Ceſtr. ſſ. Riehardus Chalons per Attorn' ſuum pet' verſus Robertum Browe octo Meſ. quatuordecem bovatas terr' du' acr' prati ſexagint' acr' paſtur' quatuor libratas du' ſolidatas ſeptem denaratas & un' obolatam redditus cum pertinen' in magna Cryſtelton, parva Cryſtelton Rowecryſtleton, magna Cotton & parva Cotton qu' Philippus de Valle Corta dedit Johanni fil' Johannis Chalons & hæredibus de corpore ipſius Johannis fil' Johannis exeunt' Et qu' poſt mortem prædict' Johannis fil' Johannis & Johannis fil' & hæred' ejuſdem Johannis fil' Johannis fil' Johannis & Roberti fil' & hæred' ejuſdem Johannis fil' Johannis fil' Johannis præfat' Rado' fil' & hæred' prædict' Roberti fil' Johannis deſcendere debent per formam donationis prædict' ut dic' Et unde dic quod prædict' Philippus, &c.

Count.

Et præd. Robertus per Johannem Lowe Attornatum ſuum ven' & defend. jus ſuum quando, &c. Et quoad omnia tenementa pd. præter tertiam partem unius act' terr' cum pertinen' de eiſdem ten' vocat inde ad warr' Thom' de Wilbraham Capellan' ſuum per auxilium Cur' in Com' pd. &c. Et quoad pd. tertiam partem (pleads Non dedit) Et de hoc pon' ſe ſuper patriam Et pd. Radus' ſimiliter Io' præcept' eſt Vic' quod Venire fac' hic ad prox' Com' ſcilicet die Martis prox' poſt Feſtum Sancti Michaelis Archangeli xii. &c. per quos, &c. Et qui nec, &c. Ad recogn', &c. quia tam, &c. Et pd. Radus' dic' qd. pd. Thom' quem, &c. nihil habuit in tenement' pd' poſt titulum pd. Johannis fil' Johannis Et hoc pet' quod inquiratur per patriam Et pd. Robertus ſimiliter Io' præceptum eſt Vic' quod Venire fac', &c. Ad quem diem ven' partes pd. per Attorn' ſuum pd. hic, &c. Et ſuper hoc loquela pd. inter alias adjornata eſt &——hanc diem hic ad prox' Com' ſcilt' ad diem Martis prox' poſt Feſtum Conceptionis beatæ Mar' Virginis per Commun'. adjornamentum hactenus in Com. pd. a tempore cujus contrar' memoria hominum non exiſtit uſitat', &c. Idem dies dat' eſt partibus pd. hic, &c. Ad quem diem ven' partes pd. hic, &c. Et ſuper hoc loquela pd. &c. (adjourn'd as before) Ad quem diem ven' partes pd. &c. Et ſuper hoc pd. Radus' bene concedit quod pd. vocar. ad warr. ſtet. &c. Ideo pd. Thom. Wilbraham voc.

Voucher.

Plead *Non dedit quoad partem.*

Counterplea de Voucher.

Venir.

Adjournment.

Waver de Voucher.

voc. ad warrant' ſum' per auxilium Cur. &c. in pd. Com. quod ſit hic ad prox. Com. ſcilicet die Martis prox. ante Feſtum Sancti Matthei Apoſtoli ad warr. &c. Idem dies dat. eſt partibus pd. hic, &c. Et ſimiliter jurat. pd. quoad hoc quod partes pd. ſuperius placitaver. ad patriam ponitur in reſpectu hic uſq; ad præfat. Com. &c. pro defectu Jurat. quia nul' ven' Io' vic. habeat corpora, &c. Idem dies dat' eſt partibus pd. hic &c. Ad quem diem ven. tam pd. Radus' quam pd. Robertus per Attornatum ſuum pd. hic, &c. Et Vic. modo mand' quod pd. Thom. nihil habet. &c. Et ſuper hoc teſtat' eſt hic quod ſat habet Io' ipſe ſum' ſicut prius quod ſit hic ad prox. Com. ſcilicet diem Martis, &c. ad warr' in forma pd. &c. Et ſimiliter Jurat. pd. continuatur ad hanc diem hic ad eund. Com. ſecundum conſuetudinem Com. pd. a tempore, &c. Idem dies dat' eſt partibus prædict. hic, &c. Ad quem diem ven' tam pd. Rad'us quam pd. Robertus per Attorn' ſu' pd. &c. Et Vic' modo mand' quod pd. Thom. nihil habet Et ſuper hoc teſtat' eſt quod ſatis habet Ideo ipſe ſum' ſicut plur' quod ſit hic ad prox' Com. ſcilicet diem Martis, &c. ad warr' in forma pd. &c. Et ſimiliter Jurat' prædicta continuatur & habet diem hic ad eund' Com. ſecundum conſuetudinem, &c. Idem dies dat' eſt partibus pd' hic, &c. Ad quem diem ven' tam pd. Rad'us, &c. Et Vic. modo mand' quod pd. Thom. nihil habet Et ſuper hoc teſtatur qd. eſt hic quod ſatis habet Io' ipſe ſum' ſicut plur' quod ſit hic ad prox' Com. ſcil. die Martis prox. poſt Feſtum Sanctæ Trinitatis ad warr' in forma prædict. Et dictum eſt pd. Roberto quod ſequatur ſuo periculo, &c. Et ſimiliter Jurat. pd. continuatur, &c. Ad quem diem ven' tam pd. Rad'us, &c. Et pd. Thom. ſum', &c. ſolemniter exact' fecit ſe Eſſon' de malo veniendi verſus pd. Rad'um de Placito pd. Et habuit inde diem per Eſſon' ſu' hic ad prox. Com. &c. & ſimiliter Jurat. pd. &c. Idem dies dat' eſt partibus præd' hic, &c. Ad quem diem Ven' tam præd' Radus' quam præd. Robertus & Thom. per Attornatum ſuum præd' hic, &c. Et ſuper hoc loquel' præd' & Jurat' præd' continuat' ſunt & hent' diem hic ad prox' Com' ſcilicet, &c. Idem dies dat' eſt partibus præd' hic, &c. Ad quem diem Ven' tam prædict' Radus' quam præd' Robertus & Thom. per Attornat' ſu' præd' hic &c. Et ſimiliter Jurat' ven' quoad hoc quod idem Radus' Et Robert' ſuperius placitaver' ad patriam hic, &c. Et ſuper hoc idem Radus' calum' arraiament' Panell', &c. **Challenge for Affinity between John le Maynwaring the Sheriff, and the Wife of the Tenant; which was Confeſſed and the Pannel quaſh'd, And Proceſs**

Sum. ad warr.

Hab. corpora, quoad exitum.

Nihil ſur ſum.

Alias ſum.

Nihil ſur al.

Plur. ſum.

Nihil ſur plur.

Sequatur ſub ſuo periculo.

Vouchee Eſſoin.

Jurat. compe-ruit quoad exi-tum.

Challenge.

Pannel quaſh

Proceſs al Coron'. Proc ſs awarded to the Coroner of Broxon Hundred, Returnable ad prox' Com'. Et ſuper hoc præd. Thom' gratis

Voucher over. Warr' præd' Roberto tenementa præd. except' præd' tertia parte ſuperius excepta, &c. Et voc' ultr' inde ad Warr',

Simil' Proceſs. &c. Robertum Madover Cler' per auxilium Cur' &c. Et ſum' in eodem Com', &c. Ideo ipſe ſum' quod ſit hic ad præfat' die' Martis prox' poſt feſtum St. Michael' Archi' &c. Idem dies dat' eſt partibus præd. hic' &c. Ad quem diem ven' tam præd' Radus' quam præd' Robertus & Thom' per Attorn' ſu' præd. hic, &c. Et vic' modo mand' quod Robertus Madorer nihil het', &c. And then goes on againſt

2. Voucher. the Second Vouchee to Sequatur ſub ſuo periculo, and till

3. Voucher. Eſſoine and Appearance as before. And the Second Vouchee appears, and vouches over a Third Vouchee with the like Proceſs and Proceedings.

This Record evidences the learning and Rules concerning the Proceſs in Voucher, and how a Deed of Vouchers may be managed to delay the Demandant, for every Vouchee may wave appearing till the Return of ſub ſuo periculo, if he be not Returned ſummoned before. Vid. Fol. 63. & 51, 52.

For Pleas in Formedons, vid. at the Cloſe of Formedon in Reverter.

GAP.

CAP. XVIII.

Formedon en Remainder.

1. A Formedon en Remainder, lies where a Gift is made in Tail or for Life, Remainder en Tail, or in Fee, and the Tenant in tail or for Life alieneth or is impleads, and dieth without Issue, he in Remainder shall have this Writ. F. N. B. 543. What.

2. This Writ is partly grounded upon the Equity of the Statute De donis Conditionalibus, for no Formedon en Remainder is expressly given by that Statute, but the Remainder Man upon an Estate-tail being in the same mischief with the Issue in Tail, equitable Construction hath all times ever since brought the Remainder Man within the same Remedy. F. N. B. 543. But for a Remainder upon an Estate for Life (some are of opinion) a Formedon in Remainder lay at Common Law; but Quer. for at the same Parliament that the Stat. de Donis Conditionalibus was made, the Statute of W. 2. c. 24. was made, which wills, that as often as it happens in Chancery that in one Case a Writ is found, and in the like Case falling in Consimili Casu cadente sub eodem jure & simili indigente remedio non reperitur, Concordent Clerici de Cancellar. de bri. faciendo. And upon this Statute the Writ of Entry in Consimili casu was grounded, which was a Writ for him in Reversion or Remainder after an Estate for Life, to Recover his Reversion or Remainder, when the Tenant for Life aliens in Fee or in Tail; and consequently it seems to appear, that before this Statute, such Remainder Man had no Remedy in the life of Tenant for Life; but yet after the death of Tenant for Life, I see no reason but he might have had this Formedon en Remainder, or the Writ of Entry ad Communem Legem. Grounded upon equity, Stat. W. 2. Where a Formedon lay at Common Law. W. 2. 6. 24. Entry in consimil Casu. Entry ad communem Legem.

However, now at this day, if the Tenant for Life alien, he in Remainder seldom or never brings either his Writ of Entry in Consimili Casu in the life of the Tenant for Life, or his Formedon after his death, or Writ of Entry ad Communem Legem, but Enters for the forfeiture, and brings his

his Ejectione firme. But Quær. if the Alienee of the Tenant for Life die seis'd before the Entry of him in Remainder or Reversion, whether their Entry be not taken away at this day? But of this hereafter when we come to the Writ of Entry in Consimili Casu. vid. Co. 2 Inst. 309.

Entry taken away at this day.

The Writ of Formedon en Remainder follows.——

Original.

A

Rex, &c. Præcipe A. quod reddat B. unum Messuagium, &c. in C. qu. L. dedit M. & hæredibus suis de corpore suo exeunt' ita quod si idem M. sine hæred. de corpore suo exeunt' obiret quod Mess. præfat. B. & hæredibus suis remaneret & quod post mortem præd. M. præfat. B. remanere debet per formam donacon' præd. eo qd' præd' M. obiit sine hæredē de corpore su. exeunt' ut dic. &c. Registr. 243.

This Writ varies according to the Case, as the other; the various Forms you may see in the Register.

Remainder executed.

Note, if a Remainder be once Executed, that is to say, if the Remainder Man be once seis'd of the Estate-tail in Possession, and Right descend to the Heir, the Heir shall never make mention of the Remainder, but shall have the general Writ of Formedon in descender, for it is a Rule in the Register, That Bria. nunquam faciunt mentionem de remanere, quando bre. est in le descender. For Example, A. gives Lands to B. in Tail. Remainder to C. in Tail, B. dies without Issue, C. Enters and aliens in Fee and has Issue D. D. shall not have a Formedon in Remainder, because C. his Father was seis'd, and the Right descended to him, but he shall have the general Writ of Formedon in descender, which shall be thus, viz.——

Formedon en descender.

There's another Rule in the Register, that if the Ancestour in remainder were never seis'd, it shall never be said Descendere debet ut filio & hered', but remanere debet

Co. Lib. 8. f. 89. a. Buckmers Case.

Original.

Præcipe, &c. Qu. A. dedit C. & hæredibus suis de corpore suo exeunt' & quod post mortem præd. C. ist. D. ut fil. & hæred' ipsius C. descendere debet, ut dic. &c. Registr. 244. Co. Lib. 8. Buckmer's Case, 88. a. F. N. B. 546. b.

All precedent remainders to be named.

But a Demandant in a Formedon in Remainder ought to make mention of all the precedent Remainders in Tail. Co. ibidem. But Quær. whether all that were seis'd in the precedent

ceſſent Remainders need to be named, viz. the Iſſues of the Remainder Men? I conceive not, no more than the Iſſues of the Donee in a Formedon in Reverter. This Q. is put by Dyer 216. He needs but to ſay, Eo quod, &c. the preceſſent Remainder dies without Iſſue.

The Proceſs and Proceedings are the ſame with the Formedon en deſcender, both before and after Appearance. Proceſs.

The Count is various according to the Writ, but the general Count according to the Writ before mentioned, is thus. Count.

B. per I. S. Attornatum ſuum pet' &c. Unde dic quod præd. L. dedit Meſſ. &c. cum pertinen. præfat. M. & hæred. de Corpore ſuo exeunt' ita quod ſi idem M. ſine hæred' de corpore ſuo exeunt' abiret Meſſ. præd. cum pertinen. præfat. B. & hæred ſu. remaner. virtute cujus Doni idem M. fuit inde ſeiſit. in dominico ſuo ut de feodo & jure per formam, &c. tempore pacis tempore, &c. capiendo &c. Et de ipſo M. quia obiit ſine hæred' de corpore ſuo exeunt' remanſit jus per formam, &c. iſt. B. qui nunc petit, &c. Et qu. poſt mortem &c. Et inde produc. ſect' &c. Raſt. Entr. 369. b.

This is a Declaration where the Right fell upon him in the Remainder named in the Gift, and the Formedon is brought by him.

If the Formedon be brought by the Heir of him in Remainder, or by the Son and Heir of the Heir, it is thus. Count.

——Et de ipſo M. quia obiit ſine hæred. de corpore ſuo exeunt' remanſit jus præfat. N. Et de ipſo N. remanſit jus per formam, &c. iſt. B. ut fil. & hæred. &c. Raſt. Entr. 369. b.

In the Precedent in Raſt. Entr. 369. b. The Count concludes, Et profert hic in Cur. quandam cart. ſub nominibus, &c. qu. donum & Remaner. præd. teſtatur, &c. which needs not be done in the Count, but a Deed muſt be ſhewn if Oyer be demanded by the Tenant, but the Count ſhall not mention the Deed. F. N. B. 546.

view, Voucher Aid.

View, Voucher, Aid, &c. and the ſame Proceedings are in this Writ as in the Formedon in Deſcender. Alſo now we come to the Formedon in Reverter.

Vid. antea & poſtea, Who ſhall be named in the Pedigree.

The reaſon why none of the Iſſues of the precedent Remainders need to be named in the Writ or Count (as I conceive they need not) is becauſe it ſtands upon the ſame reaſon with a Formedon in Reverter, where the Iſſues of the Donée need not be named, for the Remainder Man's Title depends upon the precedent Remainder dying without Iſſue, as his in Reverſion upon the Donées dying without Iſſue; and therefore needs but to ſay, Eo quod præd. D. obiit ſine exitu. &c.

CAP. XIX.

Formedon in Reverter.

Where it lieth.

1. A Formedon in Reverter lieth where the Donée in Tail or his Heirs dieth without Iſſue, then the Donor or his Heirs may have this Writ, or if the Donor or his Heirs grant the Reverſion in Fée, or the Donée or his Heirs die without Iſſue, then the Grantée or his Heirs may have this Writ. F. N. B. 546. Dyer 125.

Special Writ in remainder.

2. But if the Reverſion be granted in Tail, then the Donée dies without Iſſue, and a Stranger abates, the Grantée ſhall have a ſpecial Writ in Remainder, becauſe the Reverſion is in another Perſon, i. e. the firſt Donor F. N. B. 544.

Lay at Common Law.

3. This Writ as hath been ſaid lay at Common Law.

The Writ is as followeth, viz.——

Original.

Rex, &c. Vic. ſalutem Præcipe A. quod reddat B. un. Meſſ. &c. qd. C. pater præd. B. cujus hæres ipſe eſt dedit L. & hæredibus ſuis de corpore ſuo exeunt' & quod poſt mortem

tem præd. L. præfat. D. B. reverti debet per formam donationis præd. eo quod L. obiit ſine hærede de corpore ſuo exeunt', ut dic. & niſi, &c. Reg. 242. a. Vid. al. formam ibidem.

Note, in this Writ none of the Anceſtours of the Donor that were ſeis'd of the Reverſion, or to whom a Right to the Reverſion deſcended, are to be omitted in the Pedigrée, and therefore the omiſſion of the eldeſt Son who ſurviv'd the Father, ſhall abate the Writ, as for Example, if there be Grandfather, Father and Son, and the Grandfather gives Land to B. in Tail, and the Grandfather dies, and then the Father dies, and then B. dies without Iſſue, and a Stranger Abates, the Son in his Formedon in Reverter muſt ſay, Et quod poſt mortem B. ad præfat. C. fil. & hæred. L. fil. & hæred. L. fil. & hæred. M. the Grandfather reverti debet per formam, &c. Eo quod præd. B. obiit ſine hæred. de corpore ſuo exeunt', &c. Co. Lib. 8. f. 88. Buckmers Caſe. Who are not to be omitted in the Pedigree.

But on the part of the Donée, the Demandant need not name any of the Iſſues in tail in the Pedigrée, either in the Writ or Count, but ſhall ſay, Et qu' poſt mortem B. (the Donee) ad ipſam reverti debet eo quod (the Donee) obiit ſine, &c. Co. ibidem. Yet if he will take upon him to name them, he may, or any of them, as in the Count in Raſt. Entr. 375. a. where it's ſaid, Eo quod M. (the Son of the Donee) obiit ſine exitu, &c. But Q. whether that be good, for according as the Law is ſaid to be in Dyer 14. and Co. Lib. 8. Buckmer's Caſe, it ſhould be no good Count, for though the Son be dead without Iſſue, yet its poſſible the Eſtate-tail is not ſpent, for the Donée might have other Sons alive according to theſe Books, and therefore he ought to have ſaid, Eo quod (the Donée died without Iſſue) Dyer 216. Pl. 56. 16. b. On the part of the Donee none of the Iſſues need to be named in the Writ or Count.

The Count is thus,——I. M. in propria perſona ſua pet' verſus C. un. Meſſ. &c. Et unde dic. quod præd. T. avus præd. I. M. &c. fuit ſeiſit. de tenement præd. cum pertinen. in dominico ſuo ut de feodo & jure tempore pacis, &c. Capiend. &c. Et ſic inde ſeiſit. poſtea tenement. præd. cum pertinen. dedit præfat. H. & hæred. de Corpor. ſuo exeunt' in forma præd. virtute cujus Doni idem H. fuit inde Count.

ſeiſit' in dominico ſuo ut de feodo & jure per formam, &c. tempore, &c. Capiend. &c. Et de ipſo H. pro eo quod obiit ſine hæred. de Corpor. ſuo exeunt remanſit jus per formam &c. præfat. W. W. & hæred. de Corpor. ſuo exeunt', Et de ipſo W. W. eo quod obiit ſine hæred. de Corpor. ſuo exeunt' revertebat jus, &c. per formam, &c. iſt. I. M. qui nunc pet. ut Conſanguineo & hæred. præd. T. videlicet fil. I. fil ipſius T. Et quod poſt mortum, &c. Et inde produc. Sectam &c. Raſt. Entr. 375. a.

This Count is for the Grandchild of the Donor where a Gift is made in Tail, Remainder in Tail, and both die without Iſſue.

Note, by this Count the Father never had any Right deſcended to him, becauſe the Demandant makes himſelf Heir to his Grandfather.

Explees both in Donor & Donee

Note, for a Rule in the Count in a Formedon in Reverter, the Eſplees muſt be alledg'd both in the Donor and Donée, as you may ſee by this Count. F. N. B. 549.

Proceſs.

The Proceſs and Proceedings are the ſame with other Formedons; Now in regard theſe Actions do ſometimes happen at this day by diſcontinuances of Eſtates-tail by Fines, and Feoffments, &c. I ſhall here at leaſt give ſome light how long theſe Actions may be regularly delaied before any judgment can be given in them, which is much for the advantage of the Tenant, who ordinarily deſires to keep the Poſſeſſion as long as he can; yet this cannot always be delaied alike, becauſe the Circumſtances of the Caſe may not admit it, for he that may Vouch or Pray in Aid, &c. may delay the Cauſe much longer than he that has no ground for a Voucher, &c. And he that may have a Foreign Voucher (in a particular Juriſdiction) more than he that has only cauſe to Vouch within the Juriſdiction of the Court, &c.

Vid. for Pleas in Formedons, f. 184.

CHAP.

CAP. XX.

Proceedings in a *Formedon*, how they be manag'd and delay'd.

1. Upon the Original, the Tenants Attorney may Essoine at Westminster, 15 days. 1. day in Chester. 1. Essoine.

2. If there be no good Summons, and a Grand Cape issue for want of an Appearance, that delays the Demandant Two Terms according to the Statute of 16 Car. As if the Original be Returnable Tres Michael. the Grand Cape is Returnable Crastino Purificationis, from the 20th. of October to the 3d. of February. ——— 15 Weeks. How Formedons may be managed. 2. Grand Cape.

At Chester, the Grand Cape is Returnable the next day after the Return of the Original, or any other day in the Assise week; but the Sheriff (if he pleases) may delay the Demandant, and favour the Tenant by his Return, by returning a Tarde upon the Grand Cape, because of the shortness of the time, and so the Demandant in Cheshire may be delaied. ——— 6 Months. Chester delays Grand Cape.

3. At the Return of the Grand Cape, the Tenant may wage his Law of Non Summons, and then he shall have day to make his Law some day in Term, 15. days at least, or it may be to another Term, for these are days of grace. ——— 15 days. 3. Ley gager de Non Summons.

At Chester, day to wage his Law is sometime in the same Session Week. Chester.

4. After Appearance, the Delays may be thus; After the Demandant hath Counted, the Tenant may demand the View, or upon Oyer of the Writ. And that delays the Demandant at Westminster, two Terms at least, i. e. nine Returns. ——— 2 Terms. View.

At

Chestr. At Chester, the Writ of View is commonly Returnable the next Sessions.——————————— 6 Months.

5. Essoine puis View. 5. At the Return of the Writ of View, the Tenant may Essoine, and that gains 15. days more at Westminster.——————————————— 15 days.

Chestr. At Chester, 1. day.——————————— 1 day.

6. Count de novo. 6. At the day given by the Essoine, the Demandant Counts de novo, and the Tenant is then called to Plead,

7. Imparlance. and then the Tenant may Imparle generally or specially, and that's to some day in Term, or to the next Term, at the pleasure of the Court, for they are days of grace.——————————————— 15 days.

Chestr. At Chester, the day given by the Imparlance, whether general or special, is some day in the Sessions week, or to the next Assises, at the pleasure of the Court, but commonly day is given to the next Assises, which delays——— 6 Months.

Note, that View may be granted either before or after a Special Imparlance.

8. Voucher. 7. At the day given by the Imparlance, the Tenant must Plead or Vouch; by the Voucher the Tenant at Westminster is delayed nine Returns more, for the Summons ad Warrantizand' must have such Return, viz. if it be Test. Octab. Purificationis, it must be returnable Tres Trinitatis, which will be Two Terms more,——————— 2 Terms. 5 Months.

Chestr. At Chester, it is returnable pro prox. Session. unless in Common Recoveries,——————————— 6 Months.

9. Summons ad Warrantizand. 8. At the Return of the Summons ad Warrantizand, if the Sheriff return (nihil) the Tenant may have an al Sum. ad Warr. and that gains at Westminster,——— 15 Weeks.

Chestr. At Chester, the (al') is returnable some day in the Session week.

10. Al' plur'. 9. At the Return of the Al' and (Nihil) return'd, issues out a Plur' Sum' which gains———————— 15 Weeks.

At

At Chester, the Plur' is returnable some day in the Assise week if the time will permit, otherwise pro prox', &c. Chester.

10. At the Return of the Plur' if a Nihil be return'd issues out a Plur' with a Sequatur sub suo periculo, which at Westminster gains 15 weeks more.——————15 Weeks. 11. Sequatur sub suo periculo.

At Chestr. pro prox'——————6 Months. Chester.

11. At the Return of the Sequatur, if the Sheriff return the Vouchee Summon'd, the Vouchee may Essoine 15 days.——————15 Day. 12. Essoine pro Vouchee.

When the Vouchee appears, the Tenant may Essoine, Hob. Rep. 46. Tenant Essoine.

At Chestr. 1 day.——————1 Day. Chester.

12 At the day given by the Essoine, the Demandant Counts de novo, and the Vouchee may Imparle as the Tenant before. 13. Count de novo. Imparlance per Vouchee.

13. At the day given by the Imparlance, the Vouchee must Plead or Vouch over, &c. both at Westminster and Chester. 14. Voucher over.

After issue joyned, then is awarded the Venire fac. 15. Venire fac.

I have observ'd the Course of the Process, how long the Demandant may be delated before he can bring the Action to an issue where there is but one Tenant, and in the ordinary Course where there is but one Voucher, but if there be many Tenants and Vouchers to be Vouched over, it makes the delay possibly as long as the Parties live, though the Suit continue many years, and if one Tenant dies, the Writ in all Præcipes is abated. But by this that hath been said, it appears that in all these Actions at Westminster, and all other Præcipe quod Reddats, (except Writs of Dower, unde nihil het) The Demandant may be delayed at least a year and an half before the Cause can be brought to issue, but at Chester much longer.

And if the Tenant be an (Infant) the Cause may be delayed till he coms of Age.

CAP.

CAP. XXI.

Delays in *Cheſter* in theſe Actions.

Delays in *Cheſter*.

Eſſoin.

2. Appearance Imparlance.

1. ORdinarily the Tenant cannot avoid an Appearance at the next Seſſions, when the Original Writ is returnable, becauſe he can but Eſſoin de primo die uſque ſecund' ſcilicet a die Lun' uſque diem Martis; but after an Appearance, has two Rules to plead, in nature of Imparlances, which are only de die in diem, unleſs the Court give further time, which commonly upon a ſpecial Imparlance is till next Seſſions, pro prox'.

3. Rules to plead in *Cheſter*

2. The Common Rules to Plead are thus,——If he be called to plead upon Tueſday, the Rule to plead is ante prim' Mercur', and then upon Wedneſday another Rule, another Rule ante ſecund' Mercur' or ante prim' Jovis, at the pleaſure of the Court, after theſe Rules are out, in ſtrictneſs of Practice the Tenant cannot have any further Imparlances.

4. View.

3. But upon Thurſday mornings Court he may demand the View, and then the Writ of View is made returnable Vener' or Sabbat' (as it may be) but is commonly not returnable till the next Seſſions pro prox', that the Demandant may ſhew the Land to the Sheriff, otherwiſe he may be delayed by the Sheriff's return by a Tarde, &c. ſo here is 6 Months gain'd by the Tenant.——————————— 6 Months.

5. Eſſoin puis View.

4. At the next Seſſions, at the Return of the Writ of View the Tenant may be Eſſoin'd a die Lun' uſque diem Martis. And that day he muſt Plead or Vouch, &c. if he have imparled before. So that it is moſt for the advantage of the Tenant to demand the View at the firſt, before he takes any Rule to Plead, for by that means he may perhaps gain Two Seſſions, i. e. for the View uſque prim' prox', and then a ſpecial Imparlance uſque pro prox', which is ſeldom denied.

5. Upon

5. Upon the Voucher, the Writ of Summons ad Warr. may be returnable die Mercur. or Jovis, and then if Nihil be returned, an Al. is returnable die Vener. or Sabbat. and then a Plur. returnable pro prox. &c. But commonly the Summons ad Warrantizand' is returnable pro prox. &c. as is ſaid before.

6. Voucher. Summons ad Warr. how returnable. Al. plur' ſequatur, &c.

6. At the next Seſſions when the Sequatur ſub ſuo periculo is returned, the Vouchee muſt appear or Eſſoin uſque diem Martis If he appear, he muſt enter into the Warr. or demand what the Tenant or he that Vouched hath to bind him to warrant the Land (as the Caſe may be) and then if he enter into the Warr. the Demandant Counts de Novo againſt the Vouchee, and then the Vouchee Imparles uſque diem Mercur. or other day in the Seſſions, or he may have day till pro die prox. Seſſion', &c. and then muſt plead or Vouch over, if he plead to iſſue, and iſſue be joyned, then a Venire, &c.

7. Appearance per Vouchee. Eſſoin per Vouchee.

Count de novo.

So that the Demandant is delayed 12 Months certainly before an iſſue; but if the Tenant have Cauſe to Vouch a Foreigner who has no Land in the County, which is called a Foreign Voucher, then day is given to Uſque pro prox. &c. Et interim quod petens ſequatur alibi ſi, &c. And that delays the Demandant another ——————6 Months.

8. Foreign Voucher.

7. In the mean time a Writ to Remove the Record before the Juſtices of the Common Pleas at Weſtminſter is procured from the Chancery, in order to ſummon the Vouchee, and that delays the Demandant till the Return at Weſtminſter, which may be is the next Term, and then if the Tenant make Default, a Procedendo is awarded from Weſtminſter to the Juvges at Cheſter to give judgment upon the Default, and that cannot be till the next Seſſions, which gains 6 Months more.——————————6 Months.

9. Proceedings in a Foreign Voucher in *Cheſter*.

So that it is Two years before Judgment can be given upon a Default of the Tenant upon a Foreign Voucher. But if the Tenant appear at Weſtminſter, then a Summons ad Warrantizand' iſſues to Warn the Vouchee at Weſtminſter, which delays the Demandant Nine Returns, as is ſaid

before, and the Al' and Plur' 15 Weeks apiece more, which is a year or thereabouts, and ſometimes more——12 Months

10. Vouchee may Eſſoin at *Weſtminſter* upon a Record remov'd from *Cheſter*.

8. Upon the Return of the Sum' or Plur' Sum' ad warr' the Vouchee may Eſſoin at Weſtminſter, and that gains 15 days ——15 days.

9. At the day given by the Eſſoin, the Vouchee muſt appear and enter into the Warr', and then a Procedendo is ſent down together with the Record to the Juſtice of Cheſter, and then at Cheſter the Demandant Counts de Novo againſt the Vouchée, and upon that the Vouchee may imparle a die Lunæ uſq; diem Martis, and then muſt plead or vouch over, &c.

So that upon one ſingle Voucher the Demandant is neceſſarily delay'd from the time of the Return of the Original at leaſt two years and an half (if all Procedings go regularly on) before he can get an Iſſue; but if there be any miſawarding of Proceſs or other Irregularities, he may be delayed much longer, and ſometimes forced to begin again. And if the Tenant have a Deed of Vouchers, or there be more Tenants than one, it is not likely to be ended before either Demandant or Tenant die, and then all muſt begin again. Vid. Co. Entr. 342, 343, 344.

Vid. the manner of Proceeding upon a Deed of Vouchers before.

CAP

CAP. XXII.

Pleas in Formedons.

Pleas in Formedons. Abatement.

PLeas in Abatement are common, and the same with other Real Actions as false Latin, Variance, Non-summons, &c.

Bar.

1. It may be pleaded in Bar, That the Alienation by the Tenant or Demandant was before the Statute De Donis Conditionalibus, Rast. Entr. 360. b. But this is a Plea never probable to be put in practice now since the Statute of Fines and Limitation of Actions.

A Feoffment and lineal Warranty.

2. In Bar may be pleaded a Feoffment and Lineal Warranty with Assets by Descent, Rast. Entr. 361. a. 362. a. 14 H. 6. 3. Fitz. Abr. 5. Tit. Form. Br. Tit. Form. 73.

Collateral War.

3. So likewise may be pleaded a Collateral Warranty in a Fine or Feoffment to a Formedon in Remainder, Syms Case, Co. lib. 8. 51. So in Reverter, Rast. Entr. 361. b. Br. Tit. Form. 73.

A Fine with Proclamations.

4. A Fine with Proclamations may be pleaded to a Formedon in Descender, and five Years past, by the Statute of H. 7. This is a Bar by vertue of the Nonclaim within five years; but by the Statute of 32 H. 8. c. 36. the Fine it self being proclaim'd, is a Bar to the Estate-Tail, and so may be pleaded, Co. Entr. 317. a. b. and 324, 325. a. 326. a. b. 328. b.

Replication. *Partes finis nihil habuer'.*

5. If a Fine be pleaded in Bar, the Demandant may reply, Quod partes finis nihil habuer', &c. Co. Entr. 318. a.

Non dedit.

6. Non dedit, i. e. no such Intail is a good Plea in Bar of all Formedons; and it may be pleaded by the Vouchee, Co. Entr. 322. b. 329. b. 341. a.

Abatement by the Donor.

7. An Abatement into the Land by the Donor and avoiding it by a Remitter of the rightful Issue in Tail after is a good Plea in Bar of any Formedon, Co. Entr. 325. b. *Crowther* verſ. *Crowther*.

Remitter.

8. To a Formedon in Remainder may be pleaded in Bar an Eſtate-tail made by another long before the Donor in the Count had any thing, and that the Tenants are Heirs to the firſt Intail, Co. Entr. 334. a. b. 335. a. And note, that there in this Plea is pleaded a Fine at Common Law by the firſt Donor, which only makes a Diſcontinuance, and ſhews how the Tenants are ſeis'd as in their Remitter to the Eſtate Tail, Co. Entr. 335. a. b.

9. To this laſt mentioned Plea the Demandant may reply and maintain his Count, and traverſe the Gift in Tail, Co. Entr. 336. a. b. And the Tenant in his Rejoynder may take Iſſue and maintain his Bar, i. e. that there was ſuch a Gift, Co. Entr. 337. b.

Common Recovery.

10. A Common Recovery may be pleaded in Bar to a Formedon in Remainder or Reverter, either with double or ſingle Voucher; with ſingle if the Tenant to the Writ were ſeis'd of the Eſtate-tail at the time of the Recovery, with double Voucher, though he were not ſeis'd. Co. 1. lib. 63. Capell's Caſe. Vid. the Pleading of a Recovery with a double Voucher, the Tenant to the Præcipe being made by Fine. Co. ibidem 56, 57. Vid. Co. lib. 3. f. 5. a. b. Owen and Morgan's Caſe cited in the Marqueſs of Wincheſter's Caſe. The Caſe it ſelf in Moor, Rep. 210. Co. lib. 3. 59. a. Lincoln Colledge Caſe.

Donor ſeiz'd after the Gift.

11. It's a good Plea to ſay, That after the Gift the ſame Donor was ſeis'd, and gave the Lands to the ſame Donees in Fee, but not good, except he ſays that he was ſeis'd after the Gift. T. 2 H. 6. 15. Tit. Formedon 1. Fitz. Abr.

Remitter.

12. A Remitter may be pleaded in Bar, as thus——— That the Donée was ſeis'd in Fee, and being an Infant made a Feoffment to the Donor, who gave the Land to the Infant in Tail, by which he was remitted, whoſe Eſtate the Tenant hath. M. 3 H. 6. 19. H. 11. H. 6. 20. Tit. Formedon. Fitz.

Fitz. Abr. 2. and 11 H. 4. 5. Br. Form. 24. & 5 E. 4. 9.

13. In a Formedon the Tenant may plead in Bar an Exchange between the Anceſtour of the Demandant, and he under whom the Tenant claims, and that the Demandant entred into the Lands given in exchange, and takes the Profits. An Alienée may plead this Plea, though he be a Stranger, for he is privy in Eſtate, 3 E. 3. Tit. Form. 44. Exchange.

14. A Recovery in an Aſſiſe, and the Gift mean, between the Diſſeiſin and the Recovery, 27 H. 6. 8. Br. Tit. Form. 3. Recovery in an Aſſiſe, Gift mean, &c.

15. By way of Rebutter every Stranger may plead a Warranty, if he has the Deed by way of a Qu' Eſtate, 42 E. 3. 19. Br. Tit. Form. 10. Warranty.

16. Vid. Br. Tit. Form. 46. 7 E. 6. How the Writ ſhall be General and the Count Special in a Formedon upon a Uſe created by the Statute of 27 H. 8. And vid. where the Writ and Count ſhall be General, and ſur ne dona pas, pleaded the Replication ſhall be ſpecial, and conclude Iſſint dona. Br. 49. 7 E. 6. 1. Mar. And ſo the Writ and Count may be general, and the Replication ſpecial, where a Formedon is brought of Land recovered in Value. Br. Tit. Form. 75. See Winch's Entries 517. The Record in Formedon in Remainder where the Writ is General and the Count Special after the Statute of Uſes grounded upon this Caſe of Br. Tit. Formedon 46. How the Writ ſhall be general, Count ſpecial. Vid. Co. 2. p. 47. The Feoffer after the Stat. of Uſes, ſhall be ſuppos'd Donor in a Formedon, as it is in Winch. Entries 517.

CAP.

CAP. XXIII.

Dower unde nihil habet.

What. 1. THis is a Writ of Right in its nature called Bre' de dote unde nihil het'. And lieth where a Woman taketh Husband, who is sole seis'd at any time during the Coverture of Lands in Fée-simple or Fée-tail of such Estate, as the Issue begotten between them may inherit the same. F. N. B. 361.

Part of Dower. 2. And the Widow may have this Writ though she have part of her Dower in another Vill and of another Person, unless she have receiv'd part of the Tenant himself in the same Town, and then she must have a Writ of Right of Dower. Westminster 2. c. 48. 3 E. 1.

The Original Writ follows.——

Original. Rex &c. Præcipe A. quod reddat B. qu' fuit Uxor' C. rationabillem dotem suam qu' eam contingit de libero Tenemento quod fuit prædict' C. quondam viri sui in N. unde nihil het' ut dic' & unde queritur quod prædict' A. ei deforceat & nisi, &c. tunc sum' per bon' sum' prædict' A. quod sit coram Justic' nostris &c. ad respondendum eidem B. in plito' prædict' & habeas ibi sum' & hoc bre' Teste, &c.

For a Man and his Wife it is—— Quod reddat B. & C. Uxor' ejus rationabil' dotem ipsius C. qu. &c. unde nihil het' ut dicunt & unde queruntur quod præd. A. eis deforceat & nisi, &c.

Proces. The Proces is Summons, Grand Cape and Petit Cape.

The Plaint in lieu of a Count is thus,——Viz. A. qu' fuit Uxor C. per I. S. Attornatum suum pet. versus N. tertiam partem un. Mess. &c. cum pertinen. in W. ut dotem ipsius A. ex dotacon. præd. C. quondam viri sui, &c. Rast. Entr. 234. b.

3. Essoine

3. Essoine de servitio Regis lies not in this Writ by the Statute of 12 E. 2. but the Common Essoin lies, and but one after issue joyned by Stat. Mart. c. 13. Essoine.

Voucher likewise lies as in other Real Actions. Voucher.

View lies in a Writ of Dower unde nihil habet, as by Rast. Entr. appears, though some have questioned it; but in a Writ of Dower where the Husband died seis'd, the Heir, nor any claiming under him shall have View by the Common Law, nor the Alienee of the Husband, now by the Statute of Westminster 2. c. 48. Co. 2. Inst. 481. View.

4. The Tenant shall not have his Age in this Writ, i. e. the Parol shall not demurr for the Nonage of the Tenant in favour of Dower. 5 H. 5. 13. 12 E. 4. 12. Age.

5. At Westminster a Writ of Dower, unde nihil habet, the Return of the Process is abridg'd by the Statute of Marl. c. 12. 52 H. 3. In Dower Four days shall be given in the Year, and more if conveniently may be, Quær. how that is to be understood, for the Lord Co. 2. Inst. 124. does not expound it. And by Rast. and Co. Entr. the days are given according to the Statute of 51 H. 3. as in Actions long after the Statute of Marl. and the Statute of 32 H. 8. c. 21. Days in bank.

6. But after issue joyned, by the Statute of 16, 17 Car. c. 6. in Dower 15 days only are to be given between the Test and the Return of every judicial Process. In Chester it is de die in diem. 15 Days in judicial Process per Stat. 16, 17 Car. c. 6.

7. If the Tenant plead the Husband to be alive, that shall be tried by Witnesses, and in no other Case in the Law. 8 H. 6. 23. Rast. Entr. 228. Finches Law. 423. Co. 2 Inst. 80. 9 E. 2. lately Printed by Serjeant Maynard. Death of the Husband, trial by proofs.

8. There is another Plea in this Action which draws the Trial out of the ordinary Course of a Jury, and shall be tried by the Bishop, and that is when the Tenant pleads ne unques accouple in loyal Matrimony, and if it be an inferiour Jurisdiction that cannot write to the Bishop, as if the Action be brought in the Hustings in London, or in any other Corporation, the Record is to be removed, to have it tried Ne unque' accouple in loyal Matrimony.

in

in the Superiour Court, who may write to the Bishop, and upon Return of the Bishop's Certificate the Record is to be remanded as in a Foreign Voucher. Rast. Entr. 228. b. Co. Entr.

Record Cestr' Bre' Episcopo. 12 H. 4.

There is a Record Inter' Rotul' Cestr' in Castr' Cestr' 12 H. 4. Die Martis prox' post Festum Epiphan' Domini in bri' de dote per Johannam Uxor' Thom' Hollinworth vers' Hugoem' de Hollinworth of Lands in Hollinworth. Ne unques accouple, &c. pleaded, and a Writ is awarded to the Bishop of Coventry and Litchfield, who returned the Writ that the Demandant was lawfully married, and Judgment given for the Demandant. This is an Evidence that the Court of Common Pleas before the Justice of Chester, ever was reputed a Superiour Court, Coordinate in its Jurisdiction with the Courts at Westminster.

Record remove a Civit' Cestr' in Com. Cestr' sur plea de ne unques accouple, &c.

So in the City of Chester a Record was removed (out of the Portmoote Court) before the Justices of Chester in order to have a Writ to the Bishop, and at the day in Court before the Justices the Tenant made Default, and the Record was remanded, 22 & 23 Car. 2. Inter Berand Peten' & Harrison Tenen' in Dote, &c.

Damages recovered Stat. Mert. 20 H. 3. c. 1.

9. By the Statute of Merton 20 H. 3. c. 1. the Widow shall recover Damages, i. e. the yearly value of the Third part from the time of the death of her Husband; but this must be in Case the Husband die seised, of which the Jury must inquire, for if the Husband died not seised, the Wife can recover neither Damages nor Costs. Co. 1. Inst. 32. b.

Bre de inquir' de dam' lou ferr'.

If Judgment be given upon a Confession, nihil dicit, or any other way than upon a Verdict, if the Wife suggest that her Husband died seised, a Writ of Inquiry of Damages issues, by which Writ the Sheriff is Commanded to inquire whether the Husband died seised, and if he did, what Value the Lands are by the Year, and how long it is since the Husband died, in which Writ there may be likewise contained an Habere fac' seisinam of the Third part recovered; And upon Return of the Inquisition, Judgment is Entred for the Damages. vid. the Writ and Judgment. Rast. Entr. 238. a. b.

10. The

10. The Sheriff upon the Execution of the Writ of Haber' fac' ſeiſinam is to give ſeiſin of her Third part by Metes and Bounds (if it can be done) to hold in ſeveralty, particularizing the Lands and parts of the Houſe, &c. And this he may do without a Jury, wherein it differs from an Elegit and a Partitione faciend'. Vid. Raſt. Entr. 238. b. *Habere fac' ſeiſinam, how to be executed.*

CAP. XXVI.

Pleas in *dote unde nihil habet.*

IN Abatement of the Writ, the Tenant may plead that the Demandant has ſo much Land for her Dower in the ſame Town aſſigned, and accepted before ſhe brought her Writ. 3 E. 3. Itiner. Norf. Dower 76. *Pleas in Dower. Abatement, 1. Land in the ſame Town &c.*

So Entry into Barr, ſince the laſt Continuance is a good Plea in Abatement. Raſt. Entr. 234. Dyer 6 E. 6. 76. b. *2. Entry into part.*

Sole-tenancy, Joynt-tenancy, ſeveral Tenancy are pleadable in this as in other Real Actions. Raſt. Entr. 230. *3. Sole-tenancy &c.*

1. Pleas in Barr——The general Plea is, Ne unques ſeiſe qu' Dower, &c. Raſt. Entr. 230. a. 10. *Barr. 1. Ne unques ſeiſé.*

2. That the Demandant was not Nine years old at the time of the death of her Husband, is a good Plea in barr. H. 15 E. 3. Dower 67. Raſt. Entr. 228. a. 2. *2. Not Nine years old.*

3. That the Husband is not dead, a good Plea. Vid. how this ſhall be tried, antea Fol. *3. Husband not dead.*

Ne unques accouple, &c. Vid. antea *4. Ne unques accouple.*

5. Detaining of Evidences of the Land by the Wife is a good Plea in barr. And if in her Replication ſhe ſays, ſhe was always ready to deliver them, and do tender them *6. Detainer of Charters.*

in Court, she shall forthwith have Judgment for her Dower. Rast. Entr. 229. b. 7, 8. & 230. a. Dyer 230. a.

6. Demandant seised by disseisin.

6. It's a good Plea, That the Demandant Entred and disseised the Tenant before her Writ brought, and still is seised by disseisin. Rast. Entr. 231. a.

7. Judgment vers le Heir Vouchee & nemy vers le Tenant.

7. Note, when the Heir is Vouch'd in Dower, if he have Assets, Judgment shall be always against the Heir, and not against the Tenant, and the Tenant shall recover in Value against the Heir. And this is different from all other Cases of Voucher. H. 4 H. 7. Dower 20. 16 E. 3. Dower 56. 41 E. 3. 24. Br. Dower 10. This is Confirm'd by a Record in the Castle of Chester, Avint' Sess. Ro. 10. Oct. 11 Eliz. in Dower where Judgment is Entred exactly according to this Rule.

8. Issue nemy inheritable.

A Woman shall never be indow'd of that Land which her Issue by her Husband could never inherit, Lit. Sect. Dower. And therefore a Remitter may be pleaded in barr, as to say, That the Husband and a former Wife were seis'd in special Tail, and discontinued, and took back an Estate in Fée or Tail general, and that the Tenant is Heir to the first in Tail, and so remitted. 44 E. 3. 26. Br. Dower 14. Note this Remitter cannot be given in Evidence upon the Plea of Ne unques seise qu' Dower, &c. Dyer 30 H. 8. f. 41. a.

9. Attainder de Treason, &c.

9. Attainder of Treason or Felony in most Cases may be pleaded in barr, Vid. le Stat. Br. Dower 82. 13. E. 3.

10. Joynt-tenancy ove le Tenant.

10. Joynt tenancy with the Tenant, i. e. That the Baron had nothing but as Joynt-tenant with the Tenant in Fée is a good Plea in barr, not to be given in Evidence upon Ne unques seise, &c. 10 H. 6. 17. Br. Dower 84. H. 14 H. 4. f. 13. p. 3.

And now I have done with Writs of Right, and with Writs of Right in their nature, and with them shall conclude this Second Book. And proceed in the next place to

to Writs of Entry. 2ly. To Writs possessory Ancestrell, as the Writs of Ayel, Besayel, Cozinage. 3ly. To those Writs which contain no certainty of Messuages or Acres in the Writs, As Nuper obiit, Mottdancester & Assise of Novel disseisin, and with this I shall make up and Close the Third Book.

LIB. III.

CAP. I.

Of Writs of Entry in general.

When to be brought.

1. These Writs are brought commonly where the Tenant or he that has the Freehold in the Land came to the Possession, or did Enter lawfully, i. e. without Fraud or Tort. As by the Deed or Consent of another, who either came to the Land unlawfully (as by disseisin) or who had but a particular or defeasible Estate.

Why so called.

And they are called Writs of Entry, not only because they speak of the Entry of the Tenant in the Writ, but likewise shew for what reason the Possession ought not to be detain'd from the Demandant.

Entry in nature of an Assise, what.

2. This description will comprehend the nature of most Writs of Entry. But there is another Writ of Entry upon a Disseisin, which is called a Writ of Entry in le Quibus or a Writ of Entry in nature of an Assise against the Tenant who made the Disseisin to the Demandant himself, which differs not from an Assise of Novel disseisin in the Cause of Action, but in the Proceedings and Process. Quær. the reason of these two Remedies for the same Cause. Vid. Reg 228, 229. Finches Law. 261.

3. Degrees in Writs of Entry.

3. In this Plea or Writ there are three degrees, 1. Against him who had the Land by Demise, &c. from the Demandant himself. 2. In the Per. 3. In the Per and Cui. The First is where the Demandant Counts of his own Seisin, As for Example, In the Writ of Entry ad Termin' qui non præteriit. In the First degree it is thus.——

Primo gradu.

Præcipe A. quod juste, &c. reddat B. un' Mess. &c. in S. qu' idem B. ei demisit ad terminum qui præteriit, ut dic' Et nisi fecerit, &c. Reg. 227, b.

In

In the Per or Second degree when the Lands were Let by another, and not the Demandant himself, as thus,——

Præcipe A. quod juste, &c. reddat B. un' Mess. &c. in S. quod clam' esse jus & hæreditatem suam & in quod idem A. non habet ingressum nisi per C. Patrem, &c. cujus hæres ipse est qu' ill' demisit ad terminum qui præteriit ut dic' Et nisi, &c. Reg. 228. a. 2. Gradu.

In the Per and Cui or Third degree, where one demands Land of that Tenant who had Entry by one to whom some Ancestour of the Demandant or the Demandant himself did Demise it for a Term now expired. As thus,——

Præcipe, &c. in quod idem A. non habet ingressum nisi per C. cui præd. B. (le demandant) illud dimisit ad terminum &c. vel per C. cui L. pater præd. B. cujus hæres ipse est dimisit ad terminum qui, &c. 3. Gradu.

4. When the Conveyances of the Land or Descents from one to another, went beyond the degrees at Common Law, the Demandant was put to his Writ of Right, i. e. that if there were above two Descents and two Alienations before any Action brought, and this was for the repose and quieting of Mens Possessions, Co. 2 Inst. 153. Writ of Right when beyond the Degrees.

5. But now the Statute of Marl. c. 30. has given remedy out or beyond these Degrees, which is called a Writ of Entry in the Post; and this in Case of Alienations and Descents, where the Entry of the Tenant was at first lawful by Descent or lawful Conveyance, for in Case of Disseisin or Intrusion, there was a Writ of Entry in the Post at Common Law. Fleta. Lib. 5. c. 34. Co. ibidem. F. N. B. 474. Stat. Marl. c. 30. Writ of Entry in the Post.

6. What is said of the Degrees in the Writ of Entry ad terminum qui præteriit is applicable to other Writs of Entry, as Writs of Entry upon a Disseisin, &c. F. N. B. 474. Entry ad terminum qui præteriit.

7. A Man shall not have a Writ of Entry in the Post, when he may have it within the Degrees in the Per, or in the Per or Cui. F. N. B. 476. No Writ of Entry in the Post, where in the Degrees.

8. Ye

Entry in the Poſt, againſt what Perſons.

8. He who cometh into any Land by Record, or by Election, Succeſſion, or by Diſſeiſin, the Writ ſhall be againſt ſuch Perſon always in the Poſt. ibidem.

Writs of Entry are of divers ſorts, as Firſt, Writs of Entry in the nature of an Aſſiſe. 2. Writs of Intruſion, 3. Cui in vita. 4. Cui ante divortium. 5. Sur Cui in vita. 6. Dum non fuit compos mentis. 7. Writs of Entry ad Commun' Legem. 8. Dum fuit infra ætatem. 9. Ad terminum qui præteriit. 10. Cauſa matrimon' prælocuti. 11. In Caſu proviſo. 12. In conſimili Caſu. And Britton in the 114th. Chapter of his Book, fo. 264. B. ſays, that they are without certainty; but I ſhall Treat only of theſe that are particularly mentioned.

All thoſe Writs may be brought in the Per, or Per & Cui, or Poſt, as the Cauſe requires, as appears by F. N. B. where he deſcribes the nature of thoſe Writs, and how they are to be brought.

CAP. II.

Of a Writ of Entry in nature of an Aſſiſe.

What.

1. THE Writ of Entry Sur diſſeiſin in nature of an Aſſiſe, is properly grounded upon a diſſeiſin done to the Demandant himſelf, and then it may be brought in place of an Aſſiſe, and it is called a Writ of Entry in De Quibus.

Entry in the Quibus, wherein the Per, Cui, or Poſt. &c.

2. But a Writ of Entry in De Quibus grounded upon a Diſſeiſin may be brought againſt him who did the diſſeiſin to ſome Anceſtour of the Demandant, or againſt him who comes under him that did the diſſeiſin either to the Anceſtour or the Party himſelf. And then it is a Writ of Entry Sur diſſeiſin in le Per: Or againſt him who claims under him who claim'd

claim'd under the Diſſeiſor; And then it is called a Writ of Entry in the Per and Cui: But if he againſt whom the Writ is brought Claim at a farther diſtance from the firſt Diſſeiſor; then it is called a Writ of Entry in the Poſt. And they who claim'd in the Per or Per and Cui, were ſaid to be in the Degrees; And he that came to the Eſtate or Land in the Poſt, was ſaid to claim out of the Degrees. Vid. ſupra f. & F. N. B. ibidem. & Co. Lit. 238. b. & 239. a. where thoſe Writs are treated of at large, and when it is ſhewn what makes a Degree.

3. The Writ of Entry in nature of an Aſſiſe is thus.——

Præcipe A. quod juſte & ſine dilacon' reddat B. unum Meſſ. &c. cum pertinen' in L. de qu' idem A. injuſte & ſine judico' diſſeiſivit prædict' B. infra triginta Annos jam ultime elaps', ut dic' Et niſi fecerit, &c. Original.

Note, the time for limitation of Seiſin in this Writ before the Statute of 32 H. 8. c. 2. was from the Firſt Voyage of H. 3. into Gaſcoine, Reg. 229.

Where it is brought of the Anceſtours Seiſin it is thus.—

Quod juſte, &c. reddat B. unum Meſſ. in L. quod clam' eſſe, &c. de qu' idem A. injuſte & ſine judico' diſſeiſivit C. patrem vel matrem vel al' anteceſſorem prædict' B. cujus hæres ipſe eſt infra quinquagint' Annos jam ultime elaps' ut dic' & niſi, &c. Original.

The Limitation antiently was as is ſaid before, but now altered by the Statute of H. 8. to 50 years.

When it is brought in the Per, it is thus,———

Quod clam', &c. & in quod idem A. non habet ingreſſu' niſi per C. qu' illud ei demiſit, qu' inde injuſte & ſine judico' diſſeiſivit L. patrem, &c. prædict' B. infra quinquagint' Annos, &c. Original in the Per.

When it is brought in the Per & Cui, it is thus,——

In quod idem A. non habet ingreſſum niſi per C. cui D. illud demiſit qu' inde injuſte, &c. L. patrem, &c. Original in the Per & Cui.

When

When the Alienations or Diſcents go further, i. e. out of the Degrees, then the Writ of Entry in the Poſt is thus,——

Original in the Poſt.

Quod clam', &c. & in quod, &c. niſi poſt diſſeiſinam qu' L. inde injuſte & ſine judico' fecit S. patri vel' al' anteceſſor' prædict' B. cujus hæres ipſe eſt infra quinquagint' Annos, &c. But if it be done to the Demandant himſelf, then it is thus——niſi poſt diſſeiſinam qu' L. inde injuſte, &c. fecit eidem B. infra triginta Annos, &c.

Common Recovery upon Originals in the Poſt.

And upon this laſt Writ of Entry in the Poſt, of the Demandant's own Seiſin, are all or moſt Common Recoveries ſuffered at this day. And I conceive this Real Writ is rather choſen for ſuch Recoveries, becauſe of the Vouchees, in regard the Tenant may Vouch at large and is not bound to Vouch within the Degrees as in other Writs of Entry in the Per & Cui, and ſo it is moſt ſafe for Purchaſers who need not fear Writs of Error of wrong or illegal Vouchers. Vid. for Voucher within the Lien, and Voucher out of the Lien. W. 1. c. 40. Co. 2. Inſt. 243. 153, 154.

Proceſs.

4. The Proceſs in all theſe Writs is Summons, Grand Cape before appearance, Petit Cape after appearance, in Caſe of default.

View, Voucher, &c.

5. View, Voucher, Receit, lies in all theſe Actions.

Quær. of View in a Writ of Entry in the Quibus antea. c. View.

Voucher lies not by the Diſſeiſor himſelf. Co. 2 Inſt. 352.

6. The Count in a Writ of Entry Sur diſſeiſin in nature of an Aſſiſe of his own Seiſin is thus,——

Count.

I. S. Arm' per L. B. Attornatum ſuum pet' verſus M. un' Meſſ. &c. in N. de quo idem M. injuſte & ſine judic' diſſeiſivit præfat' I. S. infra trigint' Annos jam ultime elaps', &c. Et unde dic' quod ipemet' fuit ſeiſit' de Meſſ. prædict' cum pertinen' in dominico ſuo ut de feodo & jure, tempore pacis,

tempore

tempore Domini Regis nunc capiend' inde Exples' ad valenc' &c. Et de qu' &c. Et inde produc' Sectam &c. ſee Stowels Caſe, Pl. Com. 353.

Note, it's not ſaid (qu' clam' ut jus & hæreditatem ſu') in this Action in the Writ or Count, becauſe it is brought of his own Seiſin and againſt the immediate Diſſeiſor. Vid. Reg. 229. Raſt. Entr. 276. b. But ſee F. N. B. 474 That it ought to be (qu' clam') in this Writ as well as in thoſe of his Anceſtours Seiſin. Note.

The Count in the Writ of Entry in the Per is as the other, ſave inſtead of de qu', &c. it's ſaid, Et in qu', &c. Vet. Lib. Entr. 7. b. The ſame may be ſaid of the Writ of Entry Sur diſſeiſin in the Per & Cui. Count in the Per.

When it is of the Seiſin of the Anceſtour, the Count muſt ſet forth the Title, and is thus.——— Where the Count may ſet forth the Title.

Unde dic' quod I. S. Pater ipſius B. cujus hæres ipſe eſt fuit ſeiſit' de Meſſ. prædict' cum pertinen' in dominicó ſuo, ut de feodo tempore pacis, tempore, &c. Capiend' inde Exples' ad valenc', &c. Et de ipſo I. S. deſcend' jus, &c. iſt' B. qu' nunc pet' ut fil' & hæred', &c. Et de qu' idem A. injuſte & ſine judico' diſſeiſivit eund' I. S. infra quinquaginť An' jam ultim' elaps', &c. Et inde produc' Sectam &c. Raſt. Entr. 280. 279. b. Count.

7. Note, this Writ of Entry in nature of an Aſſiſe, may be brought by a Tenant in Tail or Tenant for Life. And the Count by Tenant for Life ſhall ſay,———Quod ſeiſit' fuit de Meſſ. prædict', &c. in dominico ſuo ut de libero Tenemento, And ſo may a Tenant in Tail without ſetting forth how the Eſtate-tail begun, or he may ſhew the Gift in Tail ſpecially in his Count as it is done in Raſt. Entr. 277. 278. Vid. F. N. B. 475. Dyer 101. Co. Entr. 219. b. By whom to be brought.

The Demand and Count in a Writ of Entry Sur diſſeiſin in the Poſt, brought by the Diſſeiſee himſelf is in every Common Recovery. And is thus———I. S. per T. Attornatum ſuum pet' verſus A. unum Meſſ. &c. ut jus & hæreditatem ſuam. Et in qu' idem A. non habet ingreſſum niſi poſt diſſeiſinam qu' H. inde injuſte & ſine judicio, Count in the Poſt.

fecit præfat' S. infra trigint' Annos jam ultim' elaps', &c. Et unde dic' quod ipſemet fuit ſeiſit' de Meſſ. prædict' cum pertinen' in dominico ſuo ut de feodo & jure tempore pacis, tempore Domini Regis Capiend' inde Exples' ad Valenciam, &c. Et in qu', &c. Et inde produc' Sectam &c. Co. Entr. 219. a.

Title, where to be alledg'd.

Thus a Writ of Entry Sur diſſeiſin **in the Poſt brought by the Heir of the Diſſeiſee, and then there muſt be a Title alledg'd as before.** Raſt. Entr. 280.

Imparlance, Aid, Receit, &c.

8. **After the Count, the Tenant may Imparle, Voucher, Prayer in Aid, Receit, lies in all theſe Writs, for which ſee before.** Raſt. Entr. 271. 285, 286.

Judgment.

9. **The Judgment againſt the Tenant is,**——Ideo Conſiderat' eſt quod prædict' I. S. recuperet verſus prædict' A. ſeiſinam ſuam de Meſſ. prædict' cum pertinen' & idem A. in mia' &c.

Judgment againſt Vouchees.

10. **If there be a Voucher or more, as in all Common Recoveries there are, then it is,**——Recuperet verſus prædict' A. ſeiſinam ſuam de Meſſ. prædict' cum pertinen', Et quod idem A. habeat de Terr' prædict' L. (le Vouchee) ad Valenc' &c. Et idem L. in mia' &c. **And if there be more Vouchers than one, then it is,**——Et quod prædict' L. habeat de Terr' prædict' C. (**the Second Vouchee**) ad Valenc', &c. **and ſo further according to the number of the Vouchers.** Co. Entr. 219. b. Raſt. Entr. 284.

This Writ was chiefly uſed where the Entry was taken away, after a diſſeiſin by the Diſſeiſors dying ſeis'd, and a Deſcent, otherwiſe an Aſſiſe againſt the Diſſeiſor himſelf was the only Remedy.

CAP.

CAP. III.

Pleadings in a Writ of Entry, in nature of an Aſſiſe.

1. NOn-tenure in Abatement of the Writ is a good Plea, as in all Real Actions. Raſt. Entr. 277. b. briefe. Non-tenure. I. C. 2. Abatement.

2. Joynt-tenancy with another who is alive, a good Plea, in Abatement, to which the Demandant may Replie that the Feoffment was by Covin, and that the Tenant takes the Profits. Raſt. Entr. 276. a. 272. b. Joynt-tenancy.

3. Sole-tenancy may be pleaded in Abatement, and over in Barr Non diſſeſivit. Raſt. Entr. ibidem. Sole-tenancy.

4. When the Tenant did not Enter by him alledg'd in the Writ, it's a good Plea. 44 E. 3. 39. Raſt. Entr. 249. a. Keilw. Rep. 93. a. No entry by him in the Writ.

Pleas in Barr.

1. In a Writ of Entry in nature of an Aſſiſe of a Rent, Hors de ſon fee is a good Plea. Raſt. Entr. 272. b. 5. Barr. Hors de ſon fee.

2. Non diſſeiſivit is the general Iſſue. Raſt. Entr. 272. b. Non diſſeiſivit.

3. A Man may Plead a Diſcent in Barr giving colour to the Demandant, otherwiſe it amounts but to the general Iſſue. Raſt. Entr. 273. a. 8. Deſcent with colour.

4. The Deſcent before, Confeſſed and avoided by virtue of a Recovery in a Writ of Right againſt a Tenant for Life, the Remainder in Fée being in the Father of him who pleaded the Deſcent, who Entred by virtue of his Remainder, and died ſeis'd, and the Recoverer Entred upon him. Raſt. Entr. 273. a. b. Replication. Deſcent avoided.

Rejoynder. Recovery falsified.

5. The Tenant may falsifie the Recovery by pleading that the Tenant in the Recovery had not the particular Estate granted to him, so as to make him Tenant to the Præcipe. Rast. ibidem.

Entry by Escheat.

6. Entry by Escheat for want of an Heir, is a good Plea in Barr. Rast. Entr. 273. b. But must give Colour, otherwise it amounts but to the general Issue. Replication, Quod habuit exitum, the Rejoynder, Quod est Bastardus. Rast. ibidem.

Recovery.

7. A Recovery in a Writ of Entry en le Post, against a Stranger, and the Title of the Demandant Mesne betwéen the Disseisin and the Recovery. Rast. Entr. 274. a.

Sale by Executors.

8. Sale by Executors by virtue of a Will with Colour to the Demandant, may be pleaded in Barr. Rast. Entr. 274. a. b.

Feoffment.

9. A Feoffment may be pleaded in barr with a Colour Rast. Entr. 275. a. In the Replication the Feoffment may be avoided by a former Feoffment by another. The Defendant may Rejoyn that the Feoffment was by disseisin and continual Claim pleaded. The Plaintiff in the Rebutter may Travers the continual Claim. Rast. 275. a. b.

Entry for a Forfeiture. Nient Compris.

10. An Entry may be pleaded in Barr, by reason of an Alienation by Fine made by a Tenant for Life, Rast. Entr. 280. In the Replication may be pleaded, not Comprizd in the Fine. ibidem.

Bastardy.

11. Bastardy in the Demandant may be pleaded. Rast. Entr. 299. b. 2.

Re-entry upon the Demandant.

12. In Entry in the Post that he was seis'd till by the Demandant disseised, and he re-entred, a good Plea in Barr. 16 H. 7. 4. Br. Tit. Entr. 40.

CAP.

CAP. IV.

Writ of Intruſion.

1. A Writ of Entry grounded upon an Intruſion, lies where Tenant for Life, in Dower or by the Curteſie die ſeis'd, and after their deaths, one intrudes and Enters into Poſſeſſion of the Land, then he in Reverſion in Fée or for Life ſhall have a Writ of Entry upon this Intruſion. F. N. B. 506. 509. What.

The Writ of Entry after the death of Tenant in Dower is thus,—— After death of Tenant in Dower.

Rex, &c. Præcipe A. quod juſte &c. reddat B. unum Meſſ. &c. cum pertinen' in C. qu' clam' eſſe jus, &c. & in qu' non het' ingreſſum niſi per intruſionem qu' in illum fecit poſt mortem L. qu' fuit Ux' D. qu' ill' tenuit in dotem de dono prædict' D. quondam viri ſui patris vel, &c. prædict' B. cujus hæres ipſe eſt ut dic', &c. Original.

In the Per thus,——In quod non het' ingreſſum niſi per C. qu' ill' ei dimiſit qu' ſe in ill' intruſit poſt mortem D. qu' fuit Uxor' E. qu' ill' &c. Original en le Per.

In the Per & Cui thus,——In qu' idem A. non habet ingreſſum niſi per C. cui D. ill' dimiſit qu' ſe in ill' intruſit poſt mortem, &c. Original en le Per & Cui.

In the Poſt it is, ——In qu. idem A. non habet ingreſſum niſi poſt intruſionem qu. C. in ill. fecit poſt mortem prædict. D. ad præfat. D. reverti debet ut dic. &c. Et unde quer. &c. Vid. Regiſter 233, 234. For ſeveral Writs brought after the death of Tenant in Dower. Original in le Poſt.

The Writs poſt mortem Tenen. per legem Angl. & Tenen. pro vita, in the Per, Cui and Poſt. Vid Regiſter 234. a. b. After death of Tenant per Curteſie.

Note

No Preſident for Count in Lib. Entr.

Note, there's no Precedent in the Book of Entries, Co. or Raſtall, or Vet. Lib. Entr. for the Count in Intruſion after the death of Tenant in Dower, or by the Curteſie. But in Dower I conceive it may be thus upon the Firſt Writ mentioned before——

Count after death of Tenant in Dower.

B. per S. Attornatum ſuum pet. verſus A. unum Meſſ. &c. qu. clam. ut jus & hæreditatem ſuam, Et in quod idem A. non habet ingreſſum niſi per intruſionem qu' ill' fecit poſt mortem L. qu' fuit Uxor D. quam ill' tenuit in dot' de dono prædict. D. quondam viri ſui Patris vel &c. al. anteceſſor. &c. cujus hæres ipſe eſt, Et unde dic. quod prædict. D. fuit ſeiſit. de Meſſ. prædict. cum pertinen. in dominico ſuo ut de feodo tempore pacis tempore Dom. Regis nunc, &c. Capiendo inde Exples. &c. ad Valenc. &c. Et ſic inde ſeiſit. apud——obiit, &c. poſt cujus mortem prædict. L. qu. fuit Uxor prædict. D. ill. tenuit in dot' de dono prædict. D. q uondam viri ſui & fuit inde ſeiſit. in dominico ſuo ut de libero Tenemento tempore pacis tempore Domini Regis nunc Capiendo inde Expleſ. &c. ad valenc. &c. Et de ipſo D. deſcend. Reverſio Meſſ. prædict. cum pertinen. præfat. B. ut fil. & hæred. &c. Et poſtea ſcilicet ——die ——Anno——eadem L. apud——obiit de tal, Stat. ſeiſit. Et in qu. &c. Et inde produc. &c.

Count variant.

If the Wife come to her Dower by Recovery, or the Reverſion be purchaſed of the Heir, the Declaration varies according to the Writs, as you may find in the Regiſter.

And after death of Tenant by the Curteſie, the Count may be thus,——

Count after death of Tenant per Curteſie.

B. per I. S. Attornatum ſuum pet. verſus A. unum Meſſ. &c. qu. clam. ut jus & hæreditatem ſuam, Et in qu. idem A. non habet, &c. niſi per intruſionem qu. in ill. fecit poſt mortem E. qu. ill. tenet per legem Angliæ poſt mortem D. quondam Uxor. ſu. matris vel al. anteceſſor. &c. per B. cujus hæres ipſe eſt, Et unde idem B. dicit quod prædict. E. & D. in jure ipſius D. fuer. ſeiſit. de Meſſ. præd. cum pertinen. in dominico ſuo, ut de feodo tempore pacis, tempore Domini Regis nunc, &c. Capiend. inde Expleſ. &c. ad valenc. &c. Et ſic inde ſeiſit. eadem D. apud ——obiit poſt cujus mortem præd. E. ill. tenuit,

tenuit ut ten. per legem Angliæ, Et fuit inde ſeiſit' in dominico ſuo ut de libero Tenemento per legem Angliæ tempore pacis, tempore Domini Regis nunc, Capiendo inde Exples. ad valenc. &c. Et de ipſa D. deſcend. Reverſio Meſſ. præd. cum pertinen. præfat. B. ut fil. & hæred. præd. D. Et poſtea ſcilicet——die——Anno——idem E. apud L. obiit de tal. Stat. ſeiſit. Et in qu. &c. Et inde produc. ſectam, &c.

This may be in the Per, Per and Cui, and Poſt. And by ſuch as Purchaſe the Reverſion, which is term'd (Ex aſſignatione) and then the Declaration varies according to the Caſe. Vid. Regiſter. 234. Per, Cui, Poſt.

The Count after the Tenant for life is thus,——

B. per I. S. Attornatum ſuum pet. verſus A. unum Meſſ. &c. qu. clam. eſſe jus & hæreditatem ſuam, & in qu. idem A. non habet ingreſſum niſi per intruſionem quam in ill. fecit poſt mortem C. cui præd. B. illud dimiſit ad vitam ipſius C. &c. Et unde idem B. dicit quod ipſe fuit ſeiſit. de Meſſ. præd. cum pertinen. in dominico ſuo ut de feodo tempore pacis, tempore Domini Regis nunc Capiendo inde Exples. ad valenc. &c. Et ſic inde ſeiſit. exiſten. Meſſ. præd. cum pertinen. dimiſit præfat. C. ad vitam ipſius C. virtute cujus quidem idem C. fuit inde ſeiſit' in dominico ſuo ut de libero Tenemento tempore pacis tempore Domini Regis nunc, Capiendo inde Exples. ad valenc. &c. idemque C. poſtea obiit ſeiſit. Et in qu. &c. Et inde produc. ſectam, &c. Count after death of Tenant for Life.

For the Counts in the Per, Per and Cui and in the Poſt, and for the Heir upon the demiſe of his Anceſtour, and Ex aſſignatione when the Reverſion is purchaſed. Vid. Raſt. 415, 416.

The Proceſs in this Writ before Appearance, is Summons, and Grand Cape; and after Appearance, Petit Cape. Proceſs.

View, Aid, Voucher, Receit, **lies in theſe Writs,** Quær. de View, vid. Raſt. Entr. 416. a. b. F. N. B. 509. View, Aid, Voucher, &c.

The Judgment is, Quod petens recuperet ſeiſinam, &c. **as in the other Actions next before.** Judgment.

CAP.

CAP. V.

Pleas in this Action.

Abatement, Non-tenure &c.

Pleas in Abatement, as to Non-tenure, Joynt-tenancy, Sole-tenancy, &c. are the same as in other Real Actions.

A Plea in Abatement peculiar in this Action as to Non-tenure.

But there is a particular Plea in Abatement peculiar to this Action, As that such an one died seis'd, and the Land descended to him, pending the Writ with a Traverse that he was Tenant at the time of the Writ brought, whereas in other Pleas of Non-tenure he must say, that he was not Tenant at the time of the Writ brought, nor at any time after. Rast. Entr. 416. a. 4. But the reason of this pleading in Intrusion is because the Writ must needs be false if he were not Tenant at the time of the Writ, and that the Land descended to him pending the Writ, for then he could be no Intruder before the Writ brought.

Traverse upon a traverse.

And note, that in the Entries there's a Travers upon a Travers, i. e. The Demandant does not take issue upon the Non-tenure travers'd in the Tenants Plea, but upon the dying seis'd—And in the Rejoynder, the Tenant joins issue upon the dying seis'd. Rast. ibidem. vid. 14 H. 4. 17.

Barr.

Barr. Q. to say Tenant for life was seis'd in Fee.

1. Quær. If the Writ be brought for an Intrusion after the death of a Tenant for Life, whether the Tenant may plead that he who is named Tenant for Life was seis'd in Fée, issue was taken upon it, but doubted. 43 E. 3. 5. Br. Intrusion 2.

The Ancestour never had any thing. Replication, that he was seis'd.

2. It's a good Plea in Intrusion brought by the Heir after the death of a Tenant for Life upon a Lease made by his Ancestour, That the Ancestour never had any thing in the Land. In this Case the Demandant must reply and shew that he was seis'd and demis'd, and issue shall be upon the seisin. 43 E. 3. 19. Br. Intrusion 3.

3. In-

3. Intruſion upon the death of Tenant for Life upon a Leaſe made by the Demandant, That he, nam'd Tenant for Life was Tenant in Tail of the Gift of the Tenant, and that he died without Iſſue, And he Entred as in his Reverſion abſque, hoc, that he nam'd Tenant for Life had any thing in Leaſe from the Demandant at the time of his death, a good Plea. 24 E. 3. 74. Br. Intr. 11.

Tenant noſtre cen' pur Vie, had nothing from the Demandant.

Note, the Heir may Enter upon the Intruder or Abator if he will, and ſo at this day he may bring his Ejection' firm' which is now the Common Action for Recovery of Land where the Entry is lawful. 5 H. 7. 6. Br. Entrie Congeable, 119.

Ejectment may be brought at this day.

CAP. VI.

Cui in Vita.

1. THE Writ of Cui in Vita lies where the Husband alieneth the Right, Inheritance or Freehold of his Wife by Feoffment or Grant for Life, or in Tail, then the Wife after the death of her Husband may have this Writ; or the Heir of an Eſtate in Fee-ſimple may have his Writ called Sur Cui in Vita, if the Wife die before ſhe brings her Cui in Vita. F. N. B. 481.

What.

2. This Writ lieth where the Wife hath an Eſtate for Life or in Tail aliened by the Husband, but in the Caſe of an Eſtate-tail the Heir cannot have a Sur Cui in Vita, but muſt bring his Formedon, F. N. B. ibidem.

Where lieth.

3. This Writ is Twofold, Either at Common Law, or by the Statute. At the Common Law, as in Caſe of Alienation by the Husband. F. N. B. ibidem. Co. 2 Inſt. 343. Fleta. lib. 5. c. 34. 36. By the Statute, in Caſe where the Husband loſt the Wifes Land by Default or by Render in a Real Action, in which Caſe the Wife was put to

Quotuplex.

her Writ of Right at Common Law, but now by the Stat. of W. 2. c. 3. she may bring her Cui in Vita. Co. 2 Inst. 341. This is to be understood where the Wife was seis'd in Fée-simple, and the Action is brought against the Husband and Wife. Co. 2 Inst. 342, 343.

Recovery per def. vers baron dun' estat. pur Vie.

But in Case of a Tenancy for Life, if the Husband lose by Default in a Præcipe quod reddat, the Wife shall have a Cui in Vita, for the Recovery shall be intended as a Demise by the Husband, otherwise the Wife should be without Remedy. Co. 2 Inst. 343.

Quod ei deforceat upon Recovery by default vers bar.

In Case of an Estate-tail, the Wife shall have a Quod ei deforc' upon the Husband's losing by Default by the Stat. of W. 2. c. 4.

Original.

The Writ is as followeth, viz.——Præcipe A. quod juste, &c. reddat B. quæ fuit Uxor L. unum Mess. &c. qu' clam' esse jus & hæreditatem suam & in qu' idem A. non habet ingressum nisi per prædict' L. quondam virum ipsius B. qu' illud ei dimisit Cui ipsa in Vita sua contradicere non potuit ut dic', &c. Reg. 232. b.

Demise alleg'd, though a recovery by default.

This Form will serve both in Case of an Alienation, and losing by Default, and in Case the Demise be traders'd the Demandant may set forth the Recovery, by default instead of a Demise. Reg. 235. a.

Per, Cui, Post.

This Writ may be brought in the Per, Cui and Post, Reg. 232. a.

The Form where the Wife was seis'd of an Estate-tail, Vid. Reg. 232.

Count variant.

The Count varies in this Action according to the Case. There's no Count for the Wife according to the first Writ before mentioned, either in Co. or Rast. Entries. But I conceive it may be thus.——

Count.

B. qu' fuit Uxor L. per I. S. Attornatum suum pet' versus A. unum Mess. &c. qu' clam' &c. Et in qu' &c. Et unde eadem B. dicit quod ipsa fuit seisit' de Mess. præd. cum pertinen. in dominico suo ut de feodo tempore pacis, tempore Domini Regis nunc Capiendo inde Exples. ad Valenc. &c. Et in qu. Et inde produc. sectam, &c.

Count

Count where the Wife is Tenant in Tail brought by Barron and Feme is thus, ——— A. & C. Uxor ejus per I. S. Attornatum ſuum pet. verſus T. B. unum Meſſ. &c. in S. qu. clamat ſibi & hæred. de Corpore ejuſdem C. & R. quondam viri ſui ſu. exeunt. ex dimiſſione qu. L. M. inde fecit eidem C. & R. & in qu. idem T. B. non habet ingreſſum niſi per præfat. R. qui ill. ei dimiſit cui ipſa in Vita ſua contradicere non potuit, &c. Et unde dic. quod præd. L. M. fuit ſeiſit. de Tenement. præd. cum pertinen. in dominico ſuo ut de feodo & ſic inde ſeiſit dedit Meſſ. præd. cum pertinen. præfat. C. & R. & hæred. de Corpore eorundem C. & R. legitime procreat. virtute cujus Doni iidem C. & R. fuer. inde ſeiſit. in dominico ſuo ut de feodo & jure per formam, &c. tempore pacis tempore Domini Regis E. nuper Regis Angliæ Capiend. inde Exples. ad Valenc. &c Et poſtea præd. R. obiit, Et præd. C. ipſum ſupervixit & cepit in virum ipſum A. & in qu. &c. Et inde produc. ſectam, &c. Raſt. Entr. 139. a.

Count per Bar. & Feme'.

Note, here by this Count you may obſerve theſe things. 1. That a Gift in Tail may be alledg'd in the Writ as a demiſe (ex dimiſſione qu. L. M. inde fecit) 2. That in the Count the beginning of the Eſtate-tail muſt be ſet forth. So if the Eſtate-tail, or an Eſtate for Life were limited by way of uſe, the Deed of Uſes muſt be ſet forth in the Count, as you may ſee in Co. Entr. Cui in Vita. Vid. the Count for the Heir in the Per and in the Poſt. Raſt. Entr. 139. a. b.

Things to be obſerved in the Count.

The Proceſs is Summons, Grand Cape and Petit Cape.

Proceſs.

View, Voucher, Reccit, Aid, Summons and Severance, lies in this Action; But note once for all, that Summons and Severance lies in all or moſt Real Actions. Vid. ſupra. Raſt. Entr. 140. a. b.

View, Voucher, &c.

The Judgment is as in other Real Præcipes.

Judgment.

But note that this Writ or Action of Cui in Vita or Sur Cui in Vita, is now of no uſe ſince the Statute of 32 H. 8. c. 28. which ſays, that the Alienation of the Husband by Fine, &c. of the Land of the Wife ſhall be no diſcontinuance to take away the Entry of the Wife or her Heirs.

This Action out of uſe per Stat. 32 H. c. 28.

Pleas in this Action.

Barr.

Barr.

Acceptance of Rent by the Wife.

If a Lease be made or a Feoffment by Baron and Feme, reserving a Rent, and the Wife accept the Rent after the death of the Husband, this is a good Plea in Barr, otherwise if the Wife do not joyn. 26 H. 6. 2. Br. Cui in Vita 2. Thus much shall suffice for Pleas in this Writ, being out of use.

CAP. VII.

Cui ante Divortium.

What.

This Writ is where the Husband aliens the Wives Lands whereof she was seis'd in Fée-simple, Tail, or for Life, and after they are Divorc'd, the Wife may have this Writ to recover the Land, as she might have the Cui in Vita after the Husband's death. It's of the same nature, and the same Process and Procedings as in the Cui in Vita.

Per, Cui, Post.

This Writ may be brought in the Per, Cui and Post. F. N. B. 510.

Sur Cui in Vita by the Heir. Formedon, where.

The Heir may have Sur Cui ante Divortium, Except his Mother had an Estate-tail, and then he is put to his Formedon. F. N. B. 510.

The Writ in the Per is thus.——

Original.

Rex, &c. Præcipe A. quod reddat C. qu' fuit Uxor L. unum Mess. &c. quod clam' &c. & in quod, &c. nisi per præd. L. quondam virum ipsius C. qui illud ei dimisit cui ipsa ante divortium inter eos celebrat' contradicere non potuit, &c. Reg. 233. Vid. there for the Cui & Post. Vid.

Vid. le Count and Procels antea mutat' mutand' in Cui in Vita. 209, 210. Count, Procels

Pleas in this Action.

This Writ and the next following, viz. (non Compos mentis) are now of little use, and therefore the Pleadings in them are of no great use neither.

In this Writ the Tenant may plead the Divorce repeal'd. Raft. Entr. Cui ante Divor. Divorce.

In the Dum non fuit Compos mentis, Fuit Compos mentis tempore Feoffamenti, &c. is the general Issue. Raft. Entr. 249. b. A Feoffment pleaded in the Dum non fuit, &c. made by him who was supposed non Compos, &c. and others, as to the others per judic' &c. As to the part of him non Compos &c. tenens dic' quod fuit Compos, &c. Raft. Entr. 249. b. Pleas in Dum non fuit Compos, &c. fuit Compos, &c.

Note, the Heir after the death of non Compos, &c. may Enter if he please. Heir may enter

CAP. VIII.

Dum non fuit Compos mentis.

1. IS a Writ of Entry for him who has alien'd his Land in Fee-simple, Tail, for Life or years, whilst he was of unsound memory. F. N. B. 504. And may be brought against the immediate Alienee, or in the Per, Cui, or Post. ibidem. What.

The Writ against the immediate Alienee is thus.——

Rex, &c. Præcipe A. quod reddat B. unum Mess. &c. quæ idem B. ei dimisit dum non fuit Compos mentis su' ut dic' Et nisi fecerit, &c. Reg. 228. Original.

See

Per, Cui, Poſt. See there in the Per, Cui and Poſt. And for the Heir in the Per, Cui and Poſt.

Quær. Quær. how this agrées with the ancient Maxim in Law, That a Man cannot ſtultifie himſelf, as it is ſolemnly reſolv'd in Beverley's Caſe. Co. Lib. 4. 123. But for the Heir it is agréed by all, that he may have this Writ in Caſe of any Alienation of his Anceſtour by matter in paiſs, but not by matter of Record.

Beverley's Caſe

It ſeems ſtrange that there is ſuch a Writ in the Regiſter, and yet Beverley's Caſe be ſo reſolv'd. And Lit. Sect. 405. acc.

Count, Pleadings, &c. For the Count and Pleadings, Vid. Raſt. Entr. 248. and before 211.

But there is no Count for the Ideot himſelf.

CAP. IX.

Entry ad Commun' Legem.

What. 1. A Writ of Entry ad Communem Legem is for him in Reverſion after the death of Tenant in Dower, for Life, or Tenant by the Courteſie, where any of them have aliened the Land in Fée, in Tail, or for any other Life. F. N. B. 518.

Why ſo call'd. 2. It's ſo called, becauſe it was an ancient Writ at Common Law in thoſe Caſes, but in ſome other Caſes it is giden by the Statute of W. 2. c. 3. As where any of thoſe Tenants do loſe by Default, or Render in a Real Action. Vid. Co. 2 Inſt. 346. & Reg. 235. whereas before the Statute of W. 2. theſe Tenants were put to a Writ of Right.

3. This

3. This Writ is always after the deaths of the said particular Tenants in Case of Alienation, for of an Alienation of Tenant in Dower, in the life time of the Tenant there is given a Writ of Entry in Casu proviso, by the Statute of Glocester, c. 7. 6 E. 1. Where it lies.

4. This Writ is thus, ——— Rex, &c. Præcipe A. qd. reddat B. unum Mess. &c. quod clam' esse jus & hæreditatem suam & in quod idem A. non habet ingressum nisi per C. qu' fuit Uxor D. qu' ill' ei dimisit qu' ill' ten' in dot' de dono præd. D. quondam viri su' Patris (vel alter' antecessor') præd. B. cujus hæres, &c. Reg. 234. Original.

This may be brought in the Per, Cui, or Post.

5. After the death of Tenant by the Courtesie, it's thus,—

Rex, &c. Præcipe A. &c. quod clam' &c. & in qu' idem A. non habet ingressum nisi per N. qu' ill' ei dimisit qu' ill' tenuit per legem Angliæ post mortem D. quondam Uxoris suæ matris præd. B. cujus hæres ipse est ut dic' &c. Reg. 235. Original.

6. He in Reversion may have this Writ or a Mortdancester, by the Stat. of Glocester, c. 3. notwithstanding the Tenant by the Courtesie was last Seis'd. Who may have it.

It lies in the Per, Cui, and Post. Per, Cui, Post.

7. After the death of Tenant for Life it's thus,—— After death of Tenant for life.

In qd' idem A. &c. nisi per L. cui præd. B. vel D. Pater vel al' Antecessor præd. B. cujus hæres ipse est illud dimisit ad vitam ipsius L. ut dic' Et nisi, &c. Reg. ibidem. Original.

It lies in the Per, Cui, and Post.

8. The Count in this Action is to be varied according to the Case, and is as in other Writs of Entry as to the general Form. I find no Count in the Books of Entries in this Action. Count.

Count. It is thus (as I suppose) in the first Writ.——.

Et unde idem B. dic' quod D. Pater ipsius B. fuit seisit' de Mess. præd. cum pertinen' in dominico suo ut de feodo tempore pacis tempore Domini Regis nunc Capiend' inde Explef. ad valenc' &c. Et sic inde seisit' existen' idem D. apud L. duxit in Uxor' præd. C. Et de ipso D. descend' jus ist' B. qu' nunc pet' ut fil' & hæred. &c. Et in qu' &c. Et inde produc' sectam, &c.

Process. 9. The Process is as in other Writs of Entry.

Note, that this Writ is intended as a Remedy where the Alienée died seis'd, and the Land descended to his Heir, for if a Tenant for Life had aliened, and the Alienée were living, it was a forfeiture at Common Law, as it is at this day, and in such Case he in Reversion may Enter. Vid. Co. 2 Inst. 309.

Forfeiture.

Pleas in this Action.

Vid. Antea. The Pleas in Abatement are as in other Real Actions.

Barr. In Barr. The Tenant may plead (Ne alien' pas) or any other thing that may Barr the Demandants Title.

CAP.

CAP. X.

Dum fuit infra ætatem.

What.

1. THis Writ of Entry is for him who during his Nonage has made a Feoffment, Lease for Life, or in tail, after he attains to full Age he may have this Writ; so may the Heir upon the Alienation of his Ancestour within Age. F. N. B. 476, 477.

Infant may Enter.

2. Or the Infant may Enter and avoid his own Feoffment while he is under Age, if he please. ibidem.

Whether now in use.

3. This Writ is not now in use ordinarily, because the Entry of the Infant is not taken away, either while he is under Age or after (as I conceive) and an Ejection. firm. is now the ordinary Remedy. Vid. Reg. 229. a.

But if the Alienée had died seised, or had aliened to another, and the Infant had not Entred during his Nonage, the Infant at full Age could not have Entred, but was put to this Writ. Quær. at this day whether the Entry in such Case be not taken away, especially if he that is in by Descent or Conveyance has had quiet Possession for Five years according to the Statute of 32 H. 8. 33. Co. 2. Inst. 153.

4. The Writ against him to whom the Alienation is made, is thus, viz.

Original.

Rex, &c. Vic' L. salutem, &c. Præcipe B. &c. quod juste, &c. reddat M. qu' plenæ ætatis est ut dicitur du' Mess. &c. cum pertinen' in C. qu' idem M. ei dimisit du' infra ætatem fuit ut dicit, Et nisi fecer', &c. Reg. 228. b.

In the Per and Cui——

Original in the Per, Cui, &c.

In qu' &c. idem N. non habet ingressum nisi per L. cui pd. C. ill' dimisit dum infra ætatem fuit ut dic' &c. Et unde quer. &c. Et nisi fecer', &c.

In the Poſt thus,——

Original in the Poſt. In quæ, &c. niſi poſt dimiſſionem qu' præd. C. dum fuis infra ætatem inde fecit W. ut dic' &c. Et niſi, &c.

(Unde quer.) is never in a Writ in the Per, or Per and Cui, but in the Poſt. F. N. B. 502.

5. The Count is as follows,——

Count. A. qu' plenæ ætatis eſt, &c. pet' verſus H. unum Meſſ. &c. cum pertinen' in N. in qu' idem H. non habet ingreſſum niſi poſt dimiſſion' qu' præd. A. dum fuit infra ætatem inde fecit W. &c. Et unde dic' quod ipemet' fuit ſeiſit' in dominico ſuo ut de feodo & jure tempore, &c. Et in qu', &c. Et inde produc' ſectam, &c.

Count as Heir. 6. If the Action be brought as Heir, then the Count is thus,——Viz. In qu' idem A. non habet ingreſſum niſi per B. Patrem ipſius A. cujus hæres ipſe eſt qu' ill' eidem H. dimiſit dum idem B. infra ætatem &c. Et unde dic' qd. præd. B. Pater ipſius A. cujus hæres ipſe eſt fuit inde ſeiſit' in dominico ſuo ut de feodo & jure, &c. Reg. 229. Raſt. Entr. 248. b.

Proceſs. 7. The Proceſs is Summons, Grand Cape, Petit Cape, View, Voucher and Receit lies in this Writ.

Pleas in this Action.

In Abatement as in all other Real Actions.

Barr. In Barr. Fuit plenæ ætatis tempore, &c. Raſt. Entr. 248. b.

CAP.

CAP. XI.

Ad Terminum qui præteriit.

1. This Writ of Entry lies where a Man makes a Lease for Life or years, and the Lessee after the Term is ended, or a Stranger Enters into the Land and detains the Possession from the Lessor or his Heir. F. N. B. 501. What.

2. This Writ may be brought in the Per, Per and Cui, or in the Post.

3. But note, this Writ is little in use, because the Entry of the Lessor or his Heir is not taken away, for that he may bring an Assise of Novel desseisin by the Statute of W. 2. c. 25. which is now supplied by the Ejection' firm'. Reg. 228. F. N. B. 502. Whether in use.

4. While the Lessee who has alienedis living, or his Alienee, this Writ does not lie since the Statute of W. 2. c. 25. (but an Assise of Novel desseisin only) which has made both the Feoffor and Feoffee being both Disseisors even at Common Law, Vid. Co. 2 Inst. 413. Sed Quær. for the Reg. 228. & Co. 2 Inst. 413. seem to differ. In all Cases of Land, &c. where a Man may have an Assise, he may have an Ejection' firm'. Note, if both Feoffor and Feoffee be dead, this Writ lies. Co. ibidem. Where it lies not. W. 2. c. 25.

5. The Writ in the First Degree is thus;——

Rex, &c. Præcipe A. quod juste, &c. reddat B. unum Mess. &c. cum pertinen' in L. qu' idem B. ei dimisit ad Terminum qui præteriit ut dic' Et nisi fecer' &c. Reg. 227. b. Original 1. gr.

6. In the Second Degree in the Per and Cui.——

Rex, &c. In qu' idem A. non habet ingressum nisi per C. cui præd. B. illud dimisit ad Terminum qu' &c. Original 2. gr.

7. In the Post thus,———

Original 3. gr. Rex, &c. In qu' idem A. non habet ingressum nisi post dimissionem qu' idem B. inde fecit D. ad Terminum qu' &c. Et quod post terminum ill' ad præfat' B. reverti debet ut dic' unde quer' quod præd' A. ei deforc' Et nisi fecer' &c.

Count. B. The Count is as follows,———Et unde dic' quod ipse fuit seisit de Mess. præd' cum pertinen' in dominico suo ut de feodo tempore pacis tempore Domini Regis hunc Capiendo inde Exples' ad valenc' &c. Et sic seisit die Anno Regni Domini Regis apud Mess. præd' cum pertinen' dimisit' præfat' B. ad Terminum Annorum tunc prox' sequen' & plenar' complen' Et qu' &c. Et inde produc' Sectam, &c. Reg. Rast Entr. 25.

Proceedings 9. The Proceis is in this as other Writs of Entry.

Pleas in this Action.

Barr. The Demise is traversable, viz. non dimisit ad Term' &c. Rast. Entr. 25.

Where it lies not. W. 2. c. 3.

CAP. XII.

Causa Matrimonii prælocuti.

Where it lies.

1. THis Writ lies where a Woman gives Land to a Man in fee or for Life to marry her in consideration thereof, and he does not, she may have this Writ, Fo. N. B. 511.

Not in use.

This Writ is obsolete, and therefore I shall not insiste upon it. Vid. the Writ in the Register, in the Per, Qui, and Post. 233.

Count.

The Count is not in Rastall's Entries, but is easie to be drawn as other Counts in Writs of Entry, observing the Writ.

Proceſs.

The Plaints is Summons, Grand Cape, Petit Cape.

CAP. XIII.

Entry in Casu proviso.

Where it lies. Stat. Glocester, 6 E. 1. c. 7.

1. THis Writ is given by the Statute of Glocester, c. 7. 6 E. 1. where a Tenant in Dower alens in fee, for Life or in Tail, he in Reversion may have this Writ during the Life of Tenant in Dower.

The Common Law before Stat. Glocester.

2. Note, at Common Law he in Reversion might have Entred for the Forfeiture, but if the Feoffee had died seis'd before Entry, then he in Reversion could not have Entred, nor could have any Action till after the death of Tenant in Dower,

Dower, ſo that the warranty of Tenant in Dower would be a perpetual Barr to him in Reverſion if he was Heir to her; to prevent which miſchief this Statute was made, for the Writ of Entry Ad Communem Legem lay not during the life of Tenant in Dower. Co. 2 Inſt. 309. F. N. B. 512.

Per, Cui, Poſt.

3. This Writ lies in the Per, Cui, and Poſt. In the Per thus,——Rex, &c. Vic' ſalutem Præcipe B. &c. quod reddat A. unum Meſſ. &c. qu' clam' &c. Et in quod, &c. niſi per C. qu' fuit Uxor M. qu' ill' ei dimiſit qu' ill' tenuit in dotem de dono præd. M. quondam viri ſui Patris (vel al' anteceſſor' præd. A.) cujus hæres ipſe eſt & quod poſt dimiſſionem per ipſam C. præfat' B. contra formam Stat. de Gloceſter de Communi Conſilio, &c. provis' fact' in feodo ad præfat' A. reverti debet per formam ejuſdem Stat. ut dic' Et niſi, &c. Reg. 235.

Original.

In the Per, Cui and Poſt, vid. Regiſter, ibidem. & F. N. B. 203.

Count.

The Count is in this as other Writs of Entry, mutat' mutand', viz.——Unde dic' quod præd. S. pater vel al' anteceſſor', &c. fuit ſeiſit' de Meſſ. præd. cum pertinen' in dominico ſuo ut de feodo tempore pacis tempore Domini Regis nunc, &c. Capiendo, &c. Et qu' poſt dimiſſionem, &c. Et inde produc' Sectam, &c.

No Count in the Book of Entries.

Note, there's no Count in the Old or New Book of Entries, but in the Writ of Conſimil' Caſu which is of the ſame nature with this Writ, being for him in Reverſion during the life of any other Tenant for Life, as this is during the Life of Tenant in Dower.

Proceſs.

The Proceſs is Grand Cape, and Petit Cape, View, Voucher, and Receit lies in this Writ.

Uſeleſs per Sta. 11 H. 7. c. 20.

The Statute of 11 H. 7. c. 20. makes all Alienations by Tenant in Dower void, and gives Entry to him in Reverſion, and therefore a Deſcent can do him in Reverſion no harm, though the Alienée do die ſeis'd, and Conſequently this Writ is now uſeleſs by this Statute.

CAP.

CAP. XIV.

Sine aſſenſu Capituli.

VID. F. N. B. 194. Fr. This Writ is now out of uſe by virtue of the Statute of 13 Eliz. c. 10. which reſtains alienations by ſeveral Bodies Corporate,

Uſeleſs per 13 Eliz. c. 10.

CAP. XV.

Entry in Conſimil' Caſu.

1. THis Writ is given by the Statute of W. 2. c. 24. which wills, that as often as it ſhall happen in the Chancery that in one Caſe a Writ is found, and in the like Caſe falling wanting the ſame Remedy, the Clerks of the Chancery ſhall agree in making of the Writ.

Where lies. W. 2. c. 24.

2. Now the Writ in Caſu proviſo before mentioned, being given by the Statute of Gloceſter in Caſe of an Alienation by a Tenant in Dower, and not in any other Caſe of a Tenant for Life, or by the Courteſie or the like (which were of equal miſchief) there this Writ was fram'd by the Clerks of the Chancery by virtue of the ſaid Statute of W. 2. Vid. Co. Lib. 8. Webb's Caſe. Co. 2 Inſt. 407.

Why given, and how framed per Stat. W. 2. c. 24.

3. The Writ, Count, and other Proceedings are the ſame with the Writ of Entry in Caſu proviſo, mutatis mutand.

Writ, Count, &c. the ſame with the preceding Writ.

4. The Writ in this, and the Writ next before do ſuppoſe the Tenant for Life hath alienen in Fee, but that is not material, for if it be in Fee, in Tail or for Life, it is a forfeiture of his Eſtate. F. N. B. 515.

Suppoſes the Tenant aliened in Fee, not material though for Life, &c.

Quær.

Whether he in Reversion in some Case be not forc'd to this Action at this day?

Quær. whether he in Reversion be not at this day put to this Writ where any other Tenant for Life doth alien (other than Tenant in Dower) by Fine or Feoffment, if the Alienor die and a Descent be cast before Entry of him in Reversion. It's true, that in Case of a Disseisin no Descent shall take away an Entry, unless the Disseisor had peaceable Possession for Five years next after the disseisin by the Statute of 32 H. 8. 33. but this (I conceive) Extends not to Discents where the Ancestour comes in by Title and Conveyance.

Stat. 32 H. 8. c. 33.

Persons now usually Enter presently.

But Persons are now usually quick in their Entries, and Tenants for Life seldom now presume to make such Alienations, and therefore both these Writs are now out of use, especially the Writ of Entry in Casu proviso, and therefore the pleadings are of no Import, neither are there any peculiar to them but what may be pleaded in other Real Actions.

And now we come to Writs possessory Ancestrel, as Ayel, Besayel, Cozenage, &c.

CAP. XVI.

Ayel, Besayel, Cozenage.

Where they lie.

1. THese Writs lie where the Grandfather, Great Grandfather or other Collateral Cozens (other than the Father, Mother Brother, Sister, Uncle, Aunt, Nephew, or Neece, for of them an Assise of Mortdancester lies) die, being seis'd of Lands or Tenements in Fee-simple the day of their deaths, the Heir shall have these Writs against him that Abates and Enters upon the Heir. F. N. B. 221. a. b. French.

Stat. Gloucester, c. 6.

Vid. Stat. Gloucester, c. 6. & Co. 2 Inst. 308. How Nephew and Neece may joyn in these Actions as well as in Mortdancester.

The

The Writ is thus.——

Rex, &c. Vic' L. ſalutem, &c. Præcipe B. quod juſte ſed- Original.
dat C. unum Meſſ. cum pertinen' in M. de qu' W. avus (vel proavus, avita vel proavia, vel conſanguineus) præd. C. cujus hæres ipſe eſt fuit ſeiſit' in dominico ſuo ut de feodo die quo obiit ut dic' Et niſi, &c. F. N. B. 221. a. b. French. Co. 2 Inſt. 399. Reg. 226.

The Count is as followeth. viz. ——

Et unde dic' quod præd. W. Avus, &c. fuit ſeiſit' de Meſſ. &c. in dominico ſuo ut de feodo tempore pacis tempore Domini Regis nunc Capiendo inde Exples' ad valenc', &c. Et de ipſo W. avo, &c. deſcend' jus, &c. iſt' C. qu' nunc pet' ut Conſanguineo & hæred' præd. W. videlicet fil' T. fil' præd' W. &c. de quibus, &c. Et inde produc' Sectam, &c. Count.

Or thus,——

Unde dic' quod præd. W. avus fuit ſeiſit' de præd. Meſſ. cum pertinen', &c. Et de tal' Stat. inde oblit ſeiſit', &c. Et de ipſo W. deſcend' feod', &c. cuid' N. ut fil' & hæred', &c. Et de ipſo N. deſcend' feod' iſt' C. qu' nunc pet', &c. ut fil' & hæred', &c. Et de quibus, &c. Et inde produc' Sectam, &c, Raſt. Entr. 28. Count where the Anceſtour died ſeis'd.

For the Count in Cozenage, Vid. Raſt. Entr. 28. b. 29. a.

5. By the Stat. of W. 2. c. 20. The Tenant may alledge in theſe Writs that the Demandant is not next Heir to the Anceſtour who died ſeis'd, and pray the ſame may be inquired by the Inqueſt as in Mortdanceſter, and if this be found againſt the Demandant, it is peremptory. Co. 2 Inſt. 399. & 400. Stat. W. 2. 20 What may be inquired by this Statute.

6. The Parol ſhall not demurr for the Nonage of the Demandant by the Statute of Gloceſter, c. 2. Co. 2 Inſt. 290. Parol ſhall not demurr.

7. The Proceſs is Grand Cape, and Petit Cape. Proceſs.

8. View, Receit, Voucher, lies in theſe Writs. Raſt. Entr. 28, 29.

Court of Cheſter. The antient Juriſdiction of the Court before the Chief Juſtice of Cheſter further appears by the Records following, Viz.

Ad Com' die Martis prox' poſt Feſtum St. Barnabæ Apoli' Anno xxvi E. 1.

Ceſter. ff. A Writ of Ayel by Urian' fil' Johannis de Sancto Petro vers' Johan' fil' Regnald' de Gray pro Maner' de Anderton ac un' caruc' Terr' in Faddelgh.

The Tenant pleads he claims nothing but as Guardian ration' minor' ætat' præd. Urian' ex conceſſione Domini Regis &c. quia dic' quod Maner' de Anderton tenetur de Domino Rege per ſervitium quint' partis feod' un' mil'.

Urian ſays that the ſaid Manor is held de Domino Rege per ſervitium un' libr' piperis per An' pro omnibus ſervitiis, & non, &c. Et quod caruca præd. tenetur de Roberto de Praiers per ſervitium xiis. per An', &c. Et non de Domino Rege, &c.

The Recognitors find the Tenure for the ſaid Urian', and Judgment is entred for the Demandant.

Ad eund' Com' xxvi. E. 1.

Ceſtr. ff. There's another Writ of Ayel between the ſame parties, as Heir to Idonea fil' David de malo paſſu avia præd. Urian' pro Maner' de Pecforton cum pertinen' in un' molend' medietat' un' molendin' cum pertinen' in Beſtan quart' part' Maner' de Fulwico un' ſalin' & medietat' un' ſalin' in Wico malbano.

The Tenant pleads the ſame Plea as in the former.

The Demandant replies, That the Manor of Pecforton is held of one Cudugon de Hynton or Hilton per ſervitium un' par' Cirothecarum per An' pro omni ſervitio Et non, &c. Et quod un' ſalina & medietas un' ſalin' tenetur de Roberto de Praiers per ſervitium un' denar' in Soccagio, Et quod

quod molendin' & medietat' molendin' tenentur de hæred' Rici' de Bunbur', Rogero de Walaſton & Margaret' Uxor' ejus in Soccag. & non, &c. Et pd. quarta pars Manēr' de Fulwico tenetur de Richardo de Sutton & Iſabella Uxor' ejus per ſervitium un' par' Cyrothecarum pro An' per omni ſervitio, Et non, &c.

The Recognitors find the Tenure for the Demandant, and Judgment for the Demandant. Mia' Condonatur.

Pleas in theſe Actions.

1. Abatement, vid. antea. Entry pending the Writ a good Plea in Abatement. Raſt. Entr. 30. a. Abatement.

2ly. Barr. The common Plea in Barr is that the Anceſtour was not ſeiz'd the day of his death, or that he died not ſeis'd. Raſt. Entr. 28. b. 2. & 29. a. 5, 6. Yet it's ſaid, that the dying ſeis'd is not traverſable, but the dying ſeis'd the day of his death. 40 E. 3. 38. 13 E. 3. Br. Cozenage, 10. Barr.

3ly. Baſtardy in the Demandant is pleadable, but this is common to other Real Actions. The Trial of Baſtardy, Raſt. Entr. 29. b. 7. Cur. Com. Ceſtr' 35 E. 1. Writ to the Archdeacon of Litchfield and Coventry to Certifie Baſtardy, Inter Hugonem Pulaford & Richardum Longnour, & Agnettam Uxor' ejus in bre' de Cozenage of Lands in Pulford. Baſtardy.

4ly. A Releaſe with warranty is no Plea without traverſing the dying ſeis'd, (but Quær. whether the dying ſeis'd ought not to be travers'd, or only the Seiſin die quo obiit) for he might be diſſeis'd the day of his death, and at another part of the day make the Releaſe, and then the Releaſe and warranty may be a Barr. Vid. 40 E. 3. f. 19. 11. Br. Cozenage. 10. Releaſe with warranty.

5ly. The Tenant may plead that the Anceſtour had two Sons, and that the Demandant is of the younger Brother, and the Tenant of the Elder, and ſo in all theſe Writs he may falſifie the Deſcent by the Pedigree. 11 H. 4. 56. Br. Coz. 2. 4. Demandant younger Son.

May be brought at this day. Ejectt' Firm'

These Writs may be brought at this day, but the Entry not being taken otway, the Ejection' Firm' is now commonly used to gain the Possession, and these Actions are now out of use.

Having now gone through with those Writs called Real Præcipe quod reddats, we come in the next place to those Real Writs which though they demand Lands in Demesne, yet contain no express Demand in the Writ, i. e. no number of Messuages or Acres, &c. And these are Nuper obiit, Assise of Mortdancester, and Assise of Novel disseisin.

Plaint in Assise Certainty in plaint or demand.

In the first and last, there are no certain numbers named in the Writ, and in the Mortdancester the Process is different; but where there's no certainty in the Writ, there must be a Plaint or Demand wherein the certainty may appear, as a Plaint in Assise thus, viz. Et unde idem B. per Attornatum suum quer' quod disseisiver' eum de uno Mess. &c. In the Nuper obiit, a demand thus, ——A. B. & L. C. per Attornatum suum per' versus M. un' Mess.——&c. Rast. Entr. 73. & 440. b.

CAP. XVII.

Nuper obiit.

Where it lies.

1. THis Writ is where the Grandfather, Father, &c. or any other Ancestour of the Demandant dies seiz'd of the Land in Fœsimple, and one of the Heirs Enters, and holds the other out, as in Case of Coparceners, or Heirs in Gavelkind, if one Enter and outs the other, the rest, he or they who are ousted, may have this Writ against the other. F. N. B. 490.

2. This

2. The Writ is thus,

Rex, &c. Vic' ſalutem, &c. Si A. B. fecer' te ſecurum de clamore ſuo proſequend' tunc ſum', &c. C. quod ſit coram Juſticiar' noſtris, &c. (tal' die) oſtenſur' quare deforc' præfat' A. & B. rationabil' partem ſu' qu' eis contingit de hæreditate qu' fuit W. in N. Patris vel al' anteceſſor' prædict' A. B. & C. cujus hæredes ips' ſunt & qu' nuper obiit dic', Et habeas ibi ſum' & hoc bre' T. &c. Reg. 226. Original.

3. This Writ and the Writ of Right De rationabil parte, are of Affinity, for both are for the Recovery of Land by one Coparcener againſt another, and lie in privity. The difference is, that the Writ of Right may be brought if the Anceſtour was ſeis'd at any time, but in the Nuper Obiit, the Anceſtour muſt die ſeis'd, Reg. 226. vid. antea. 134. Difference between this Writ and the Writ de rationabil' parte.

4. The Count.——Et unde dic' quod prædict' W. Pater, Mater vel Avunculus, &c. fuit ſeiſit' de prædict' Tenement' integr' cum pertinen' unde, &c. in dominico ſuo ut de feodo & jure tempore pacis tempore, &c. Capiend' inde Exples' ad valenc', &c. Et inde nuper obiit ſeiſit', &c. Et de ipſo W. deſcend' jus, &c. iſt' A. & B. qu' nunc pet' ſimul, &c. Et præfat' C. ut filiabus & hæredibus, &c. qu' quidem C. prædict' Tenement' integra modo tenet & rationabil' partem inde eiſdem A. & B. deforc. &c. Et inde produc. ſectam, &c. Raſt. Entr. 440. Note, there's a Demand to be made of the certainty of the Meſſuages, &c. before this Count. Raſt. ibidem. Count.

5. View, nor Voucher lies in this Writ. Quær. of View for I conceive it lies by Stat. of 12 E. 2. View, Voucher, &c.

6. The Proceſs is Grand Cape and Petit Cape. Proceſs.

Pleas in this Action.

1. Non tenure, or ſeveral tenancy are no Pleas in this Writ, becauſe of the privity of Blood; but if the Tenant claim by Purchaſe or diſclaim in the Blood, then he may plead theſe Pleas in Abatement. F. N. B. 492. 197. Fr. B. 7 H. 6. 8. If the Tenant diſclaim, the Demandant may have Non tenure &c. no Plea.

a

Barr. a Mortdanceſter for the whole Co. 1. Inſt. 2ly. In Barr may be pleaded a Feoffment, and traverſe dying ſeis'd. Raſt. Entr. 441.

Now not in uſe. This Action is out of Uſe (as others) where the Entry is not taken away, and the Coparcener ouſted, might have an Aſſiſe (as I conceive) againſt the other at Common Law. Vid. Co. 1 Inſt. 167. b.

What judgmt. in this Action. Vid. Co. 1 Inſt. 167. The judgment ſhall be to have her Part, and not in ſeverality; though ſome Books ſay in Severalty.

CAP. XVIII.

Aſſiſe of Mortdanceſter.

Where it lies. 1. THis Writ lieth where the Father, Mother, Brother, Siſter, Uncle, Aunt, Nephew or Neece, die ſeis'd, or ſeis'd the day of his death of Lands, Rents or Hereditatments in Fee-ſimple, and a Stranger Abate after their death, the Heir ſhall have this Writ. F. N. B. 195. Fr.

2ly. The Writ is thus,——————

Original. Rex, &c. Si A. fecer. te ſecur. &c. tunc ſum. &c. duodec. liberos, &c. de vicineto de W. quod ſint coram dilectis & fidelibus noſtris R. C. & I. H. & hiis. &c. uſque parat. Sacramento ibi recognoſcere ſi B. Pater prædict' A. fuit ſeiſit. &c. de uno Meſſ. &c. cum pertinen. in W. die qu. obiit. Et ſi obiit, &c. Et ſi idem A. propinquior ſit hæres &c. Et inter. prædict. Meſſ. videant, &c. Et ſum. &c. L. de N. qu. prædict. Meſſ. &c. tenet quod tunc ſit ibi ad audiend. ill. recognitionem. Et habeas ibi, &c. Teſte, &c. Reg. 223. b.

This

This Writ is when the Assise is returnable before Special Commissioners, but may be returnable before Justices of Assise or Justices at Westminster, F. N. B. ibidem. Special Commissioners.

The Commission for special Commissioners, vid. Reg. 223.

3ly. There are three Points in this Writ to be inquired of by the Jury. 1. Si A. Pater vel Mater, &c. fuit seisit. in dominico suo ut de feodo die quo obiit. 2. Si obiit infra tempus de limitatione ut infra 50 ans, &c. 3. Si petens sit propinquior hæres? 3 Points to be inquired.

4ly. But these Points are not to be inquired of if the Tenant pleads in Barr of the Assise, i. e. some other matter, as a Release, a Warranty, &c. out of the three Points of the Assise, for then upon issue joyned, the trial is peremptory, and the Jury shall not inquire of the three Points, and such Pleas always begin Assisa non, &c. Co. 2 Inst. 399. Where the 3 Points are not to be inquired.

5ly. But if the Tenant make Default, yet the three Points shall be inquired, and unless they be found for the Demandant he shall not Recover. Co. ibidem. Where to be inquired in case of Default.

6ly. If the Tenant Appear, and say he is ready to bear the Recognisance of the Assise of one of the Points in the Points in the Writ, or traverse one of the Points in the Writ, or plead in Abatement, or Vouch, and the Demandant Counter-plead the Voucher, and these Pleas be tried and adjudged for the Demandant, yet the Court ex Officio ought to inquire of all the Points in the Writ. Co. ibid. Vid. Dyer 310. Finches Law. 93. 2 E. 3. 47. b. 9 E. 3. 349. 10 E. 3. 393. 9 Assise 17. & 40 E. 3. 48. 39 Assise 13. 8 Assise 17. Where to be inquired in other Cases.

7ly. This Writ lies, though the Ancestour was in by disseisin. Ass. pl. 3. Lies though the Demandant's Ancestour was a disseisor.

8ly. In this Action, a Certificate, Writs of Association & Si non omnes, &c. may be had as well as in Assise of Novel disseisin, for which see more in Assise de Novel disseisin. f. F. N. B. 196. Fr. Certificate, &c. Si non omnes, &c.

9ly. The

Proceſs. 9. The Proceſs is Summons and Reſummons, and upon Default at the Return of the Reſummons, Capiatur Aſſiſa, the Inqueſt ſhall inquire of the three Points. F. N. B. ib. Raſt. Entr. 435. b.

Count muſt ſhew how Heir 10. In the Count in this Writ the Demandant muſt ſhew how he is Heir, i. e. how Couzen by the Pedigree. 2 Aſſ. pl. 15.

Eſſoin. W. 1. c. 42. W. 2. c. 28. 11. Neither Tenant or Demandant ſhall be Eſſoin'd in this Writ after Appearance, and therefore they muſt Eſſoin the firſt day. Stat. W. 1. c. 42 W. 2. c. 28. Co. 2 Inſt. 248.

Whether now in uſe ſince Stat. H. 8. of Wills. 12. Quær. whether ſince the Statute of H. 8. whereby Lands are deviſable by Will, this Action be altogether uſeleſs, becauſe it did not lie for Lands deviſable by Will before the Statute. F. N. B. ibidem. vid. Leon. 1. P. 267. it ſeems it does lie ſtill.

Pleas in this Action.

Abatement. 1. Abatement, That another or the Demandant himſelf was laſt ſeized, is a good Plea in Abatement. 5 Aſſ. pl. 1. Br. Mortd. 16. Br. Mortd. 27.

Baſtardy. 2. Barr, Baſtardy may be pleaded in Barr though it be a poſſeſſory Action. 1 Aſſ. pl. 15. Br. Mortd. 13.

Nontenure and over. &c. He may plead Nontenure, and over to the Aſſiſe. 2 Aſſ. pl. 10. 10.

Leaſe for years. 4. A Leaſe for years may be pleaded in Barr, 36 Aſſ. pl. 6.

Feoffment. Common Recovery. Fine. 5. So of a Feoffment with a traverſe of the Seiſin. But if a Fine or Recovery be pleaded, the Seiſin needs not be traverſed, becauſe it ſhall never be intended that the Anceſtour was ſeis'd againſt matter of Record. 6 E. 4. 11. Br. 52. Mortd.

Ad Com' die Martis prox' post Festum Sancti Barnab' Apoli' Anno E. 1. xxxi.

Cestr. ff. Assisa Mortdancester per Urian' de Sanct' Petro vers. Johannem fil' Reginald' de Gray de medietate Maner' de Bonbur' quarta parte Maner' de Beston & quarta parte Maner' de Spurstow.

The Tenant pleads he claims nothing but as Guardian, Ex dimissione Domini Regis de qu' Tenement' tenentur per servitium Militar'.

The Plaintiff replies that the moity of the Manor of Bonbury and the fourth part of the Manor of Beston are held of Edwin the Son of Philip Burnell per servitium un' Sagittæ per An' pro omnibus serviciis, and the fourth part of the Manor of Spurstow is held of one Hena ap Eignon' & Alic' Uxor' ejus per servitium un' Denar' per An' pro omnibus, &c. Et non de Domino Rege per aliqu' servitium Militar'.

The Jury found the Land as the Plaintiff alledg'd. Judgment for the Plaintiff.

Ad eund Com'.

Cestr. ff. Another per Johannem Cherlton upon the death of Thom' of Cherlton his Father, of one Mess. octo Acr' Terr' duab' Acr' bosci & un' Acr' Mor' cum pertinen' in Weston juxta Bertomlegh, against Simon of Cherlton and Emma his Mother.

The Tenant pleads non seisit' die, &c. Found for the Plaintiff, Judgment for him.

CAP. XIX.

Aſſiſe of Novel diſſeiſin.

Where lies. 1. AN Aſſiſe of Novel diſſeiſin lies where a Man is Tenant in Fee-ſimple, Tail or for Life, is diſſeiſed and ouſted of his Poſſeſſion, he may recover his Poſſeſſion by this Action. F. N. B. 437.

Why ſo call'd. 2. It's called an Aſſiſe from the French word Aſſis, i. e. aſſeſſum locatum, either becauſe they ſettle the Poſſeſſion, or becauſe they were anciently Executed at a certain time and place. Vid. Blunt's Diction. Aſſiſe of Utrum. And they were called Aſſiſes of Novel diſſeiſin, i. e. of a late or new diſſeiſin done ſince the laſt Eyre, for if it were done before, the Action was gone, and every Eyre was from Seven years to Seven years. Co. 1 Inſt. 153. b. ¶.

Jury appears the firſt day. 3. In the Proceedings in this Action, the Original Commands a Jury to appear the Firſt day, who are called (Recognitors of the Aſſiſe) it may be returnable before the Judges of the Common Pleas, or King's Bench, if the King's Bench be in the County where the Lands lie, or otherwiſe in the Common Pleas. F. N. B. 437. or they may be returnable before Juſtices in Eyre, or Juſtices of Aſſiſe by the Stat. of W. 2. c. 13. without any Patent.

Special Commiſſioners. 4. There's a way of Proceeding before ſpecial Commiſſioners which is called a Special Aſſiſe, and in that Caſe there muſt be a ſpecial Patent directed to the Juſtices. F. N. B. 439. And in this Special Aſſiſe there may be a Writ of Aſſociation of Aſſiſe in nature of a Patent, and a Writ of Si non omnes, &c. ſued forth by the Plaintiff if he pleaſe. F. N. B. 462.

Original. 5. The Original Writ is thus,——Rex, &c. Queſtus eſt nobis, A. quod B. injuſte & ſine judicio diſſeiſivit eum de libero Tenemento ſuo in E. infra triginr. Annos jam ultime elaps', Et ideo tibi præcipimus quod ſi præd

A.

A. fecer' te secur' de clamore su' prosequend' tunc facias Tenementum illud reseisiri de Catallis qu' in ipso capt' fuer' & ipsum Tenementum cum Catallis esse in pace usque ad primam Assisam cum Justic' nostri in partes ill' venerint, Et interim fac' xii. liberos & legales homines de Vicinet' ill' videre Tenement' ill' & nomina eorum imbreviar', Et Summon' eos per bon' Summonit' quod sint coram præfat' Justic' ad præfat' Assisam parat' inde facere recognitionem. Et pon' per vad' & salvos pleg' præd. B. vel Ballivum suum sui ipse invent. non fuer. quod tunc sit ibi ad audiend. ill. recognitionem. Et habeas ibi Sum. nomina plegiorum & hoc bre. Teste, &c. Reg. 196.

6. This Writ is made returnable before the Justices of Assise. If it be returnable before the King in Banc' suo or Justices of C. B. then the Writ in that is to be altered quod vid. Reg. ibidem.

7. From the frame of this Writ there are these four things to be observed. 1. That the Sheriff is to take Security of the Plaintiff to prosecute, or he may give Security in Chancery. 2ly. Formerly the Sheriff was to reseise the Land and all the Cattle upon it, and keep all in his hands to be answerable to the Party that should recover, and not suffer the Disseisor to alienate the Land, and this was for the preservation of the Peace by virtue of these words in the Writ, Et Tenementum ill. reseisiri de Catallis qu. in ipso, &c. but now it is otherwise, for the Plaintiff shall recover Damages by the verdict of the Assise. 3ly. That the Jurors, the Recognitors of the Assise should view the Land, or other thing whereof the disseisin is complained, and this must be done by Seven at the least of the Jury, per Fleta. 4ly. That the Jury is to appear the first day. 5ly. That the Process against the Jury is Summons, and against the Party and his Bayliff an Attachment by his goods or Lands, and if he do not appear, the Assise shall be taken. Vid. Fleta: Lib. 4. c. 5. 222. & Cap. 7.

4 Things observable from the Writ.

8. It lies of any thing that a Præcipe quod reddat lies at Common Law. But by the Stat. of 32 H. 8. c. 7. it lies of a Parsonage, Vicarage, Tithes, &c. and by W. 2. c. 25. of Profits apprender, as of Estovers, de nucibus, glandibus, &c. in alieno Solo. vid Co. 2 Inst. 412. It lies of Offices.

Of what it lies.

9. The Plaint in Assise is as a Count in other Real Actions, for there's no Count besides, and is as follows, viz.——

Plaint. Assisa ven. recognitur. si A. injuste, &c. disseisivit B. de libero Tenemento suo in C. infra originat. Annos jam ultime elaps. &c. Et unde idem B. in propria persona sua quer. quod A. disseisivit eum de dict. Mess. cum pertinen. in D. &c.

Note, this limitation within 30 years is by virtue of the Statute of 32 H. 8. c. 2.

Special things observable in this Action.

10. In this Action, there are some special things worthy to be considered. 1. What is meant by taking the Assise. 2ly. What it is to take the Assise at large. 3ly. What it is, and when a Man may say Ven. Assisa super Articulum. 4ly. When the Inquiry shall be in modum Assisæ. 5ly. When in modum juratæ. or Qualiter Assisa venitur in jurat. as Fleta expresseth it.

1. Taking of the Assise, what it means.

1. As to the first, the taking of the Assise is the swearing of the Recognitors to inquire of the Points of the Assise, i. e. of the Seisin and Disseisin, and in such Case the Recognitors are sworn to that effect. But if any other matter be pleaded in abatement or in barr of the Assise, as villenage in the Plaintiff, Release, Agreement, Warranty, &c. and are at Issue out of the Points of Assise, &c. i. e. upon some other Collateral matter, then the Recognitors are sworn only as another Common Jury, i. e. to trie the Issue, &c. And therefore the Tenant always begins his Plea in barr Assisa non, &c. Fleta Lib. 4. c. 9. P. 236. & c. 11. P. 238. Co. 2 Inst. 399.

2. Taking the Assise at large, what.

2. To take the Assise at large is to take a special Verdict of the Recognitors of the Assise, finding not only the Seisin but the special manner of the Entry, and so leaving it to the judgment of the Court whether there be any disseisin or not. Litt. Sect. 386, but this is common with other Actions. But to take Assise at large, peculiar to an Assise is, 1. where the Recognitors are bound to find and inquire after other matters besides the seisin and disseisin, as where an

Infant

Jurant brings an Assise, and the Feoffment of his Ancestour is pleaded against him, the Assise then shall be taken at large, i. e. to inquire not only of the Points of the Assise, but whether the Ancestour were of age, of good memory, but of Vision when he made the Deed pleaded. 26 Ass. 5. Kitchin f. 66. 2dly, Another sense of taking the Assise at large is when the Recognitors shall only inquire of the Seisin and Disseisin, and Damages, and not of the Plaintiff's Title, as where the Tenant makes Default. Pl. Com. 415. 22 Ass. 11. 36 Ass. 29.

Ven. l' Assise sur le Title, &c. what.

3. As to the Third, Ven. le Assise sur le Title, &c. this is a Plea for the Tenant when the Plaintiff hath made a Title at large, without answering to the Barr pleaded before by the Tenant as in some Cases he may, then the Tenant may pray that the Assise may be taken upon the Title, i. e. That the Recognitors may inquire of all matters and circumstances concerning the Title, but if the Plaintiff traverse the Barr, and they are at Issue, nothing can be inquired but the Barr which is traversed, and not the Title to be inquired after, for the Title in such Case is but to induce the traverse of the Barr, 5 H. 7. 29. b. Vid. there where the Tenant may plead Ven. Assisa super titulum, and where not, 30, 31, 32, 33. & 21 E. 4. 31. For Example, if the Tenant plead that his Father was seised and died seised, and he entred and gives Colour to the Plaintiff, if the Plaintiff Reply that the Father of the Tenant died seised, and traverse the dying seised, upon which they are at Issue, the dying seisen shall only be inquired and not the Plaintiff's Title i. e. the Feoffment; but if the Plaintiff make a Title at large and say, That after the Decease his Father entred by a Stranger and died seised, and he entred, then the Tenant may plead Ven. Assisa, &c. ibidem. So that in short, when the Plaintiff does not traverse, but confess and avoid the Barr by making a Title to himself, the Tenant may say, Ven. assisa super titulum, &c.

Where ven. l' Assise sur, &c.

4. As to the Fourth, when Assisa vertitur in Jurat: the Assise is said to be turned into a Jury when they are to inquire of matters put in Issue out of the Point of the Assise, i. e. out of the Point of seisin and disseisin, which Points must first be determined before the Assise can be taken as to the seisin and disseisin; as if the Tenant plead

When Assisa vertitur in Jurat.

si

in Abatement to the Writ, as Villenage, &c. or other matters triable by a Jury, and Issue is taken, or matters in Barr, as a Release, Agreement, &c. Vid. Fleta Lib. 4. c. 10. And the Assise is said to pass in modum juratæ: So if a Foreign matter be pleaded in a Foreign County, that must be tried by a Jury before the Assise can be taken, and in such Case the Assise is adjourned and the Record sent to the Common Pleas for the trial of the Foreign Plea, and this called Assisa extra Assisam, or in modum juratæ. Bract. Lib. 4. P. 1. c. 34.

Observable things in pleading in this Action.
2. Colour.
3. Abatement, and over in Barr.

5. There are several things specially observable in pleading in this Action. 1. In Pleading a Title in Barr, Colour must be given by the Plaintiff, 21 E. 4. 82. 21 E. 4. 5. Dr. & St. c. 53. 158. Co. Lib. 10. 90. a. Leyfields Case. 2ly. The Tenant may plead in Abatement and over in Barr, or take the general Issue Nul tort, Nul disseisin, 12 E. 2. Jur. Utrum 12. 40 E. 3. 29. Finch Ley 385. 3ly. The Plaintiff may Traverse or Confess and avoid the Barr, or in most Cases (where the Tenant pleads in Barr) may in his Replication make a Title at large without answering to the Barr, vid. antea 5 H. 7. 29, 30, 31. &c. 4ly. Where the Plaintiff makes a Title at large, the Tenant may in his Rejoynder say, Ven' Assisa super titul', &c. and not be forced to maintain his Barr. 5 H. 7. ibidem, and 15 H. 7. 13. 5ly. Before Verdict, the Count or Plaint may be abridged as if the Plaint be of Land or Rent, he may abridge it for the Rent. So of two Manors he may abridge it for one, 14 Ass. 9. 4 E. 4. 33.

3. Title at large.

4. Ven Assise, &c.

5. Abridgment of the Plaint.

No Essoin, Voucher, Receit lies.

6. No Essoin, Voucher or Receit lies in this Action, unless the Vouchee be party to the Writ and appear presently and enter into the Warranty. Co. 2 Inst. 249. & 411.

Plea in Abatement first to be tried.

7. Where the Tenant pleads in Abatement and over to the Assise, the Plea in Abatement must be first tried, but never no Issue taken upon it or answered. 7 E. 6. Pl. 91. Finch's Law. 416.

Where Title cannot be made at large.

8. If the Tenant plead a Recovery, Fine, grant of the Reversion and Attornment in another County in Barr, the Plaintiff cannot make a Title at large, but must answer the Barr, and if the Plaintiff make a Title by a Fine, Recovery,

very, The Tenant cannot plead Ven' Assisa super titul', &c. because these matters are not triable by the Assise. 5 H. 7. 29.

9. If an Infant bring an Assise, if a matter in Abatement be pleaded against him, or the Deed of his Ancestour in Barr, not only the Seisin and Disseisin, and the Point in Issue shall be inquired, but all other Circumstances, i. e. whether the Ancestour was of Age, out of Prison, &c. which is taking the Assise at large as before, f. 214. Otherwise in a Writ of Entry sur disseisin, or other Præcipe qd. Reddats, for there the Point in Issue and no other shall be tried. 11 Ass. 6. 48 E. 3. 33. 9 E. 4. 34. So if any matter of Record be pleaded against the Infant in Assise, that must be answered, and the Jury shall not inquire of the Circumstances. 48 E. 3. 33. Where in case of an Infant this Assise shall be taken at large. Vid. Kel. 141. a.

10. If the Infant plead to the Assise at large, i. e. nul tort nul disseisin, and a Title be pleaded against him, all the Circumstances shall be inquired, otherwise if he plead in Barr. 28 Ass. 21. Infant plead nul tort, &c.

---

11. The Jury ex Officio ought to enquire of the Force in Assise, but if they do not, it's no Error. Co. 2 Inst. 236. Force to be inquired ex Officio.

These matters are more fully spoken of in the Supplemental Tract, which I have added to this Treatise at the end of it, and therefore I shall only say something of a Certificate of Assise and set down some Entries of Records in this Action. Supplemental Tract.

Certificate of Assise is a Writ for the Party griev'd by a Verdict or Judgment given against him in an Assise when he had something to plead, as a Record or Releas, and it was not or could not be pleaded by the Baily of the Tenant in his absence, or in case the Assise was taken by default, by this Writ the Tenant shall have the Deed tried, and Record brought in before the Justices, and the former Jury shall be summoned to appear before them at a certain day and place for a further examination and trial of the matter. Vid. F. N. B. 447. Co. 2 Inst. 414. Certificate of Assise.

2 Sorts of Certificates of Assise.

There are Two sorts of Certificates of Assise, One at Common Law, and this was after Verdict or before, and after Judgment when the Verdict was not well examined by the Justices, the Justices ex Officio might examine it, and in that Case the same Recognitors must be summoned, and if any of them died, the Certificate at Common Law was fail'd, Co. 2 Inst. 415. The other by the Stat. of W. 2. c. 25. That is after Judgment when the Bailiff had appear'd, and the Assise had found against him, whereas the Tenant himself had a Record to plead, or a Release which the Bailiff could not plead though he had offered to plead the Record, but had not the Release, in such Case the Tenant shall have a Writ of Certificate of Assise returnable before the same, or other Justices, whereby the Recognitors of the former Assise and the Plaintiff shall be summon'd at a certain day and place, &c. And this extends to all, 1. Novel disseisin. 2ly. Juris Utrum, 3ly. Darreine presentmt. 4ly. Mort-dancester. Co. 2 Inst. 415. The Certificate must be sued and judged where the Assise was sued. 12 H. 4. 20. 26 Ass. 50. Co. 2 Inst. 416.

W. 2. c. 25.

The Writ of Certificate at Common Law is thus,——

Writ of Certificate.

Rex, &c. Vic' salutem Quia super quibusdam articul' contingentib' Assisam nove disseisine qu' inter A. & B. sum' fuit & capt' coram dilectis & fidelibus nostris H. & R. apud N. per br' nostrum de Tenement' in I. quæd' subsunt dubitationes sicut ex querela ipsius A. accepimus Constituimus præfat' H. & R. vel præfat' H. & dilectum & fidelem nostrum L. vel sic, dilectos & fideles nostros una cum iis qu' sibi associavimus ad Certificationes inde capiendas. Et ideo tibi præcipimus quod ad certam diem & locum qu' iidem N. & R. tibi Scire fac' jurator' ill' Assise coram eis Venire fac' ad Certificand' eos super articul' prædict' & sum' per bon' summon' prædict' A. & B. quod tunc sint ibi ad audiend' ill' Certificationem, Et habeas ibi Sum' nomina jurat' & hoc bre' T. &c. Reg. 200. a. Vid. ibidem, the Writ upon the Stat. Vid. plus in the Supplement.

Assises in Com' Cestr.

Ad Com' proxim' post Festum St. Lucæ Evang' Anno Regni R. E. 1. xxvj.

Cestr. ff. An Assise per Johannem del Holt de libero Tenemento suo in Hunsterton, i. e. de un' Mess' du' Toft' vigint' acr' Terr' xx. acr' bosci octo acr' vasti & sexta parte un' molendin' in eadem Vill. vers' Johannem fil' Willielmi Friend & Ricu' fratrem ejus.

The one pleads Non-tenure & nul tort, the other. John, pleads Tenancy in Common, and over in Barr a Difsent, and the Plaintiff replies at large, That he was in quiet Possession for Four years till disseis'd by the Tenant, and Judgment for the Plaintiff upon the Verdict of the Recognitors.

Ad Com' die Martis proxim' post Festum St. Barnabe Apŏli' xxvj. E. 1.

Cestr. ff. Assisa per Adam de Burcheles vers' Alanu' de Asthull, Johannem fratrem ejus, Jordan' fratr' ejus de un' Mess. sex acr' Terr' & dimid' acr' prati cum pertinen' in Burcheles.

Johannes & Jordan' plede non tenure, & quod null' fecer injur' &c. pet' quod inquir' per Assisam. Alan' as Tenant pleads in Barr the Feoffment of the Plaintiff, the Plaintiff traverseth the Barr, and found for the Defendant, and Judgment for him.

Ad Com' die Martis proxim' post Festum St. Barnab' Apol' Anno E. 1. xxvj.

Cestr. ff. Assisa versus Willielm' Lancellyn, Henric' fil' Robert' de Tnemoll Bigertham qu' fuit Uxor Rogeri le Mowere & Johan' Redeoks per Nicholau' fil' Rici' Textor' & Leuc' Uxor' ejus de un' Mess. cum pertinen' in superiori Bebington.

William Lancellyn pleads Non tenure & nihil Clam. but the Foundership, the House being an Hospital for poor Peo-

ple, Founded by his Ancestours, Et quod nullam fecit injur. &c. The others plead as Tenants in Abatement, that the House is in Pulton and not in Bebington, and ober in Barr, and pray the Assise, Ideo Capiatur Assisa, &c. and the Recognitors found the House was in Pulton and not in Bebington. Judgmt. quod defend. eant sine die & præd. Johannes & Luca in mia' &c. Condonantur quia pauperes.

The Proceedings and Pleadings were very Concise and Summary in those times of E. 1. I shall only set down one at large as it is in the Record, viz. That of Adam de Burches before mentioned.

Cestr. ff. Assisa ven. recognitur. si Alanus de Asthull Robertus frater ejus, & Jordanus frater ejusdem diss. Adam. de Burcheles de libero Tenemento suo in Burcheles postquam, &c.

Et unde quer. quod prædict. Alanus, Robertus & Jordanus diss. eum de un. Mess. sex acr. Terr. & dimid. acr. prati cum pertinen. in Burcheles.

Et prædict. Robertus & Jordanus ven. & dic. quod nihil habent in prædict. Tenement. nec aliquod inde here. Clam. & quod null. injur. fecer. nec disseisinam pet. quod inquir. per Assisam.

Et prædict. Alanus qu. est Tenen. eorund. Tenement. ven. & dic. quod Assisa non debet inde procedere dicit enim quod ipse seisit. est de prædict. Tenement. per donum & Feoffament. prædict. Ade qu. tul. istam Assisam pro octo marc. argenti quas sibi pacavit præ manibus & postea fecit inde homag. capital. Domino feodi ill. & hoc per cart. prædict. Ade qu. profert qu. hoc testatur.

Et prædict. Adam dicit quod ingressus est per disseisinam & non per cartam prædict. Et hoc pet. quod inquir. per Assisam. Alanus similiter.

Mia. ij s. Jur. dic. super Sacrament. su. quod prædict. Alanus, Robertus nec Jordanus null. fecer. injur. nec disseisinam. Ideo Considerat. est quod prædict. Adam nihil Cap. per bre. su. sed sit in mia. pro falso clamore, Et quod prædict. Alanus & al. sint inde quiet. sine die.

In

In the time of E. 4. There was an Assise brought against the Mayor and Citizens of Chester, for Lands upon Hole Heath, which I have the rather taken notice of because of late years there have been Suits by the Earl of Shrewsbury against the said Citizens concerning their Title to the said Lands. And these Records set forth their Title of Commoning. The Record in substance, is to this effect, viz. Mayor and Citizens of *Chester.*

Cestr. ff. Placita Com. Cestr. apud Cestr. coram Thom, Domino Stanley Mil. Justic. domini Principis ibidem die Matis proxim. post clausum Pasche Anno xxij E. 4.

It is brought by Richard Cholmondeley for disseising him of his Freehold in Hole. i. e. xx acr. Terr. &c.

The Mayor and Citizens plead that the City of Chester is an ancient City time out of mind, Corporated of a Mayor and Commonalty, and that E. 1. was seis'd of the County of Chester, of which the City is parcel in the right of his Crown in Fee, and had Common for himself and all his Tenants inhabiting within the City of Chester in a place called Hole-Heath; and that E. 1. by his Charter dated at York, xij Jun. xxviij Regni sui gave the City of Chester to John Arnewey then Mayor of the City of Chester, and to the Commonalty of the same City and to their Successors, Yielding to the King and his Successors, Cl. per Annum at the Exchequer at Chester at Michaelmas and Easter, by equal Portions, and then shew how afterwards they have ever had Common for all manner of Beasts at all times of the Year; and then set forth how the County descended to E. 4. and that he gave the County and the Rent to Edward his Son, Prince of Wales, and so pray aid of the Prince, which is granted: And then the Action is continued to several Counties, and Procedendo at length sent to the Justice of Chester, Test. apud Cestr. xxvi Decemb. xxij E. 4.

I shall conclude this Chapter with one other Record in the Court of Common Pleas in the County of Chester, in an Assise of Darreine Presentment in the time of E. 1. In which some things more than ordinary are observable.

Placita apud Ceſtr. die Martis prox. poſt Feſtum St. Laurentii Martyr' Anno E. 1. xxvi.

Ceſtr. ff. **An Aſſiſe of** Darreine Preſentment **to the Church of** Aſtbury **by the Abbot of** Cheſter, **againſt** William Venables **of** Newbolt.

Aſſiſe of Darreine preſentment. **The Recognitors find as the Plaintiff Declared, That** Reginald, **Son of** John de Gray **was the laſt Incumbent, and preſented by** Simon **Abbot of** Cheſter, **and inquire of the** Mortmaine, **and whether the ſaid** William **was of full Age,** infra quatuor Maria, extra Priſonam, & bon. memor. **at the time of the Preſentment of** Reginald.

The Recognitors find for the Abbot, upon the whole matter, viz. **That** William **was under Age at the time,** &c. **under the Guardianſhip of one** Roger Puleſdon, **and that the ſaid** Roger **for the ſaid** William **withſtood the ſaid Preſentation, but that** Simon **the Abbot, recovered againſt the ſaid** William **in an Aſſiſe of** Darreine Preſentment, **and find other Preſentments made by the ſame** Simon **and his Predeceſſors; and find the manner of the diſturbance made by the ſaid** William **upon the ſaid Vacancy,** i. e. **That he intruded into the Church and took the Keyes, and put** 30 **armed Men into the ſaid Church to keep Poſſeſſion for him as Patron, ſome of which continued there** xv **Days, and for that time would not ſuffer the Pariſhioners to enter into the ſaid Church,** &c. **The Defendant in this Action made default, and Judgment for the Abbot.** Dam. V. mark.

Juris Utrum. **There's one Writ more called a** Juris Utrum, **which as it is in nature of an Aſſiſe, may not improperly come next in order, though as it is a Parſons Writ of Right it might have been brought under the learning of Writs of Right, and with this Writ I ſhall cloſe this third Book.**

CAP.

CAP. XX.

Juris Utrum.

1. THere are Five Real Actions wherein a Jury to try the Cauſe are returned upon the firſt day, as 1. Aſſiſe of Novel diſſeiſin. 2. Aſſiſe of Mortdanceſter. 3. Aſſiſe of Darreine Preſentment. 4. Juris Utrum. 5. Attaint. 5 Writs where the Jury appears the firſt Day.

2. This is a Writ for a Parſon at Common Law, and for a Vicar, Warden of a Chantery, Chappels, Provoſts, &c. by the Statute of 14 E. 3. to recover their Lands where the Predeceſſor aliened them or loſt them by Default or Reddition in a Real Action, or by Verdict (unleſs it be in a Writ of Right) tri'd if the Patron and Ordinary were not Party by Aid praier. F. N. B. 50. d. Fr. c. 48. Reg. 32. What.

3. This is a Parſon's Writ of Right, and the higheſt he can have. F. N. B. 48. 50. Parſons Writ of Right.

But I conceive this Writ is now clearly out of uſe ſince the Statute that reſtrained all alienations by Eccleſiaſtical Perſons. 13 Eliz. c. 10. Except a Parſon be out of Poſſeſſion above 20 Years, then I conceive he is put to this Writ by the Statute of 21 Jac. 1. c. 6. but the Succeſſor may Enter, becauſe he comes in the Poſt. Now uſeleſs per Stat. 13 Eliz. c. 10.

The Writ is as followeth.———

Rex, &c. Si A. Perſona Eccleſiæ de D. fecer', &c. tunc ſum. &c. xij. liberos, &c. vicinet' de D. quod ſint coram Juſticiar. noſtris ad primam Aſſiſam, &c. vel coram Juſtic. noſtris tal. die parati ſacramentum recognoſcere utrum unum Meſſ. &c. in E. ſit libera Eleemoſyna pertinen. ad eccleſiam ipſius A. de D. an laic. feod. S. & interim Meſſ. ill. videant & nomina eorum imbreviar. fac. Et ſum. per bon. ſummonit. prædict. S. qui Meſſ. ill. tenet quod tunc ſit ibi ad audiend. ill. recognitionem, Et habeas, &c. ſum. & hoc bre. T. &c. Reg. 32. b. Original.

The Entry. The Entry is Jurata ven. recognitura Utrum unum Meſſ. &c. in E. ſit libera Eleemoſyna pertinen. ad Eccleſiam, &c.——Vid. le Count in Co. Lib. Entr. 399.

One brought, 10 Jac. Ther's one brought in the 10 Jac. in Co. Entr. but I ſuppoſe it was upon an Alienation before the Statute of Eliz.

Proceſs. 4. The Proceſs is Summons and Reſummons, and then if the Tenant make Default, the Jury ſhall be taken. F. N. B. 48.

Jury taken by Default without a Reſummons. But by Co. Entr. 401: a. The Jury is taken by Default, without a Reſummons upon a Default the firſt Day.

Plead in Abatement and over in Barr. 5. The Tenant may plead as in an Aſſiſe, Two or Three Dilatories to the Writ and over in Barr. Et ſi ne trove ſoit, &c. F. N. B. 49.

The general Iſſue, what. 6. The general Iſſue for the Tenant is, That it is his Lay-fée, and not the Alms of the Church. Co. Entr. 400.

Eſſoin. W. 1. c. 42. W. 2. c. 28. 7. In an Aſſiſe of Mortdanceſter, Juris Utrum, or Attaint, the Tenant ſhall not be Eſſoined after Appearance by the Statute of W. 1. c. 42. Nor the Demandant after the firſt Day per Stat. W. 2. c. 28. And therefore in Cheſter upon the firſt Day of the Aſſiſes or great Seſſions, the Prothonotary or his Clerk cauſe a Proclamation to be made, that if any Perſon will be Eſſoined in an Aſſiſe of Mortdanceſter, Certificate of Aſſiſe, Juris Utrum, or Attaint. he muſt come forth and Enter the ſame ſitting the Court, or none will be received.

Cheſter.

Recovery pleaded, & iſſint ſon lay fee. 8. A Recovery in a Real Action againſt the Predeceſſor of the Demandant, and ſo his Lay-fee is a good Plea in Barr and not double, for the Juris Utrum is a Writ of Right for the Parſon, and in a Writ of Right, the Tenant may plead a Recovery or other Special matter, and Conclude, Et ſic ipſe habet majus jus, &c. 19 H. 8. 7. Br. Juris Utrum, 1.

LIB. IV.

CAP. I.

Quare Impedit.

HAving now gone through with Real Writs which concern the Right, or in the Right and for the Recovery of Lands in Demesne, we proceed to those which concern the Recovery of Hereditaments, or for the doing or performing of other things, of which sort are 1. Quare Impedit. 2ly. Quo jure. 3ly. Quod permittat. 4ly. Bre. de Medio. 5ly. Bre. de Consuetudinibus & servitiis. 6ly. Secta ad molendinum. 7ly Warrantia cartæ. 8ly. Cur. claudend. 9ly. Partition. faciend. 10. Writ of Covenant Real. And when we have done with these, we shall conclude with such Writs and Actions as relate to the Redressing of Force and Fraud, and quieting of Mens Possessions after they have duly Recovered them by Law. As 1. The Writ of Deceit. 2ly. Quod ei deforceat. 3ly. Entry upon the Stat. 5 R. 2. 7. 15 R. 2. 2. 8 H. 6. 9. 13. El. 11. 21 Jac. 15. 4ly. Redisseisin and Post-disseisin, and lastly Attaint.

What.

1. Quare Impedit is a Writ for the Recovery of an Advowson, or rather a Presentation of a Clerk to a Church, where another by a Presentation hinders his Clerk from being Instituted upon his Presentation, or where one that has no Right procures his Clerk admitted, i. e. Instituted, in such Case the true Patron may have this Writ to remove the Incumbent, and to have his Clerk admitted if he bring his Writ within Six months next after the Institution.

2. This

Lay at Common Law before Institution.

2. This Writ lay at Common Law against the Disturber at any time before Institution, Co. 2 Inst. 360. But plenarty before the Writ brought, was a good Plea at Common Law. ibidem.

3 Sorts of Writs for Advowsons at Com. Law.

3. At Common Law there were three sorts of Writs for Recovery of Advowsons to Churches. 1. The Writ of Right of Advowson spoken of before. 2ly. Quare Impedit. 3ly. Assise of Darreine Presentment; which two last are called Writs of Possession, because they lie only where the Plaintiff is not put out of Possession, and a bare Right only left in him, for where he has nothing but a Right, he is put to his Writ of Right of Advowson, Vid. Co. 2 Inst. 356, 357. Fleta, Lib. 5. c. 17.

Stat. W. 2. c. 5. which gave Remedies in Quare Impedit.

4ly. But because there were several defects and mischiefs in the Quare Impedit at Common Law, therefore the Statute of W. 2. c. 5. 13 E. 1. was made. For whereas at Common Law, if the Clerk of an Intruder, one that had no Right, had got his Clerk admitted, that is, Instituted, the rightful Patron had been put out of Possession and was driven to his Writ of Right of Advowson, Co. Lib. 6. 49, 50, 51. Boswell's Case, which was very mischievous to some persons especially, as 1. Purchasers. 2ly. Infants. 3ly. Feme Coverts. 4ly. Persons in Reversion depending upon Estates for Life or Years, as Tenants by the Courtesie, Tenants in Dower. For the Purchaser if he never had presented, in Case of a Usurpation upon him, had lost his Advowson for ever, for he could not have a Writ of Right because he never had presented, but a Quare Impedit he may have by this Statute within the Six months, and may alledge a Presentment in his Count in him from whom he purchased; and so at Common Law (I conceive) he might have done if he had brought his Quare Impedit before the admission of the Intruder's Clerk. Sed Quær. de ceo Co. 2 Inst. 356.

Usurpations mischievous to 4 sorts of Persons at Common Law. 1. Purchasers. 2. Infants. 3. Feme Coverts. 4. Reversioners.

Infants, Feme Coverts, Reversioners, relieved against Usurpations.

5. So now by this Statute, Infants, Feme Coverts, Reversioners, may at the next Avoidance after they come of Age, after the death of their Husbands, and the death of their particular Tenants, may have a Quare Impedit or Assise of Darreine Presentment, as their Ancestors, Husbands or Lessors might have

have had in the last Vacancy in their own times, and shall not be put to their Writ of Right.

5. By this Statute none shall be put out of Possession of his Advowson that brings his Quare Impedit within Six months, (infra tempus semestre) next after the Usurpation, so that now Plenarty is no Plea as it was at Common Law; but Plenarty for the space of Six Months is still a good Plea, except against the King. Co. 2 Inst. 360, 361. Plenarty, no Plea if not in Six months.

6. The Plaintiff may recover Damages by this Statute, which he could not at Common Law, Co. 2 Inst. 362. But the Plaintiff cannot recover Costs, nor the Defendant, because no Damages lay at Common Law for the Plaintiff. Co. ibidem, Vid. Stat. 23 H. 8. c. 15. & 4 Jac. c. 3. Quære, whether the Plaintiff shall recover Damages in any Case but where the Bishop has Collated or might Collate. By the words of the Statute it seems not. Vid. Co. Lib. 6. Boswell's Case. f. 51. Damages recoverable, no Costs.

7. By force of this Branch of Damages there are three Points the Jury are to inquire of in a Quare Impedit, or Assise of Darreine Presentment. 1. Si Ecclesia sit plena & consulta. Et si sit, de cujus præsentatione. 2ly. De annuali valore Ecclesiæ. 3ly. Si tempus semestre transivit. Co. Lib. 6. Boswell's Case, f. 51. Dyer 194. These Points were not inquirable at Common Law. Co. ibidem. Bract. Lib. 4. Tract. 2. c. 6, 7. f. 246. 3 Points to be inquired in a Quare Impedit

8. A Man may have Title to the Advowson or Patronage of a Church, Chappel, Abbey, Prebendary, &c. many ways, as, 1. By purchase. 2ly. Descent. 3ly. Grant of the next Avoidance. 4ly. As Executor, if the Church become void at the time of the Testator, and be void at the time of his death. 5ly. By lapse, as belonging to the Bishop, if the Patron do not Present within Six months after the Avoidance, the Bishop may Collate, and so the Metropolitan if the Bishop neglect to Collate for Six months, and then at length the King in Default of the Metropolitan. How many ways a Man may have Title to an Advowson.

9. The Writ is thus, ——— Rex, &c. Vic. salutem, &c. Præcipe A. quod juste, &c. permittat B. præsentare idoneam personam ad Eccles. de N. qu. vacat & ad suam spes- Original.

ctat donationem ut dic. Et unde quer. quod præd. A. eum injuſte impedit, Et niſi fecer. ſum. per bon. ſum. præd. A. quod ſit coram Juſtic. noſtris Ceſtr. apud Ceſtr. primo die prox. Seſſion. Com. Ceſtr. apud Ceſtr. tenend. oſtenſur' quare non fecer. Et habeas ibi ſum. & hoc Bre. Teſt. Regiſtr. 30.

Againſt whom may be brought

10. This Writ may be brought againſt the Diſturber only or againſt the Incumbent and Diſturber, or againſt the Biſhop, Diſturber and Incumbent. But if the Biſhop be not made a Party to the Writ, he may Preſent by laps after the Six months paſt, and if the Incumbent be not made a Party, he cannot be removed by Judgment in the Quare Impedit. Cro. 2. pt. 93. Lancaſter vers. Low. Co. Lib. 6. f. 5. Boſwell's Caſe. Reg. 31. Cro. 2. pt. 96. But note, to prevent the Biſhop Preſenting, Br. de Quare Impedit pendente, though he be not made Party to the Writ, the Plaintiff may have a Writ called a Ne admittas in nature of a Prohibition, forbidding him to Collate, pending the Cauſe in the Quare Impedit. Reg. 31. And ſee there the Writ of Ne admittas.

Ne admittas.

Summons in Perſon or Church, &c. 15 days.

11. The Sheriff muſt Summon the Defendant in Perſon, or at the Church 15 days at leaſt before the Return. Br. 101. Quare Impedit.

Eſſoin. Cheſter.

12. At the Return of the Writ every Defendant may have one Eſſoin, which in Cheſter is de die in diem. In the Common-Pleas the days given are de Quindena in Quindena. vel de tribus ſeptiman. in tres ſeptiman. i. e. 15 days, or 21 days at the moſt by the Statute of Marl. c. 12. 52 H. 3. which reſtrain'd the Common days of Return in Bank, in Caſe of Dower, Aſſiſe of Darreine Preſentment & Quare Impedit. Vid. Co. 2 Inſt. 123, 124.

Proceſs. Summons. Attachment. Diſtreſs.

13. If the Defendant appear not, nor Eſſoine in Caſe he be return'd Summon'd, then an Attachment ſhall be awarded, and if he appear not upon the Return and be returned Attach'd, then ſhall be awarded the grand Diſtreſs, and if he be return'd diſtrain'd and do not appear, then Judgment ſhall be given againſt the Defendant, and a Writ awarded to the Biſhop, and this by virtue of the ſaid Statute of Marl. for at Common Law it was only Summons, Attachment and Diſtreſs infinite. Co. 2 Inſt. 124.

14. Note,

14. Note, if the Defendant make default after an Eſſoin before Appearance, the Proceſs is the ſame as before. Raſt. Entr. 520. b.

Proceſs, the ſame after an Eſſoin.

15. If there be ſeveral Defendants, if one make Default, the other may Eſſoin, and Proceſs ſhall go forth againſt him only that made the Default, Raſt. Entr. 520. a. b.

Some Eſſoin, others make Default.

16. If the Sheriff return Nihil upon the Summons, Attachment and Diſtreſs, Judgment ſhall be Entred for the Plaintiff as if the Defendant had made Default upon Summons. Co. 2 Inſt. 124.

Judgment upon Nihil returned.

17. After an Appearance upon the Diſtringas, if the Defendant take day by Prece Partium, and then make Default, then an Al. Diſtringas ſhall be awarded, and not a Writ to the Biſhop. Co. 2 Inſt. 125. Reg. 2. a.

Al. Diſtringas, when.

18. After the Defendant hath Appear'd, the Plaintiff muſt Declare; but becauſe the Declaration is various, and many times long according to the nature of the Plaintiff's Title, I ſhall not ſet it down at large in hæc verba, but refer to the Book of Entries, both Coke and Raſtall. Only ſhall obſerve ſome Rules of direction to be made uſe of for the better drawing of the Declaration.

Declaration, various.

1. In the Declaration muſt be alledg'd a Preſentment in the Plaintiff or his Anceſtors, or in ſome other Perſon, under whom he claims. As the Heir may alledge a Preſentment of his Anceſtor, a Purchaſer, a Preſentment by him from whom he purchaſed. F. N. B. 78. Eng. Co. Lib. 5. f. 98. 8 H. 5. 10. 9 H. 7. 23. 16 H. 7. 8. Dyer 106. Co. 2 Inſt. 356.

Preſentment to be alledg'd in the Declaration.

2ly. If a Man build a Church Parochial, though he never Preſented, yet he may have a Quare Impedit without alledging any Preſentment in his Count, præter neceſſitatem. 16 H. 7. 8. 21 E. 4. 3. b. So if a Perſon come to an Advowſon by Recovery in a Writ of Right in his Declaration, he may alledge a Preſentment in him againſt whom he recovered without any other Preſentment. 39 H. 6. 25. b. 14 H. 6. 5. b. Co. Lib. 5. 97. 16 H. 7. 8.

Where a Preſentment needs not be alledg'd.

Presentment of Tenant for years, &c. sufficient for the Reversioner.

3. If Tenant for Life or Years be Present, this is sufficient for him in Reversion, and he must allege it in his Declaration, and if there be several mean Presentments by the Tenant for Life or Termor, they must be all alledged in the Count or Declaration. 16 H. 7. 8. 22 E. 4. 9. 4 E. 4. 3. a. 7 E. 4. 20. b. 42 E. 3. 4. a.

The manner of the Voidance must be shew'd.

4. In the Declaration, the Plaintiff must set forth how the Church became void, i. e. by death, Resignation, or Deprivation, because the Defendant may Traverse the manner of the Avoydance, if he Claims by another sort of Avoidance, as by Simony, taking a Second Benefice, or the like. Cro. 2 part 6. Sr. George Farmer against Nicholson, Cro. 1 pt. 51. Rast. Entr. 485. 490. 511.

Judgment by Default without a Declaration.

5. Note, the Plaintiff may have Judgment by Default of Appearance without making any Declaration of his Title, Dyer 241. But I conceive it safer to make a Title, Moore Rep. 81. n. 214.

Attachment & Distress judicial Writs.

19. The Attachment and Distress are Judicial Writs, and are to be sued forth out of the Court where the Original Writ is return'd.

The Attachment is as follows.——

Attachment.

Rex, &c. Vic. Salutem. Præcipimus tibi quod pon. per Vad. & salvos pleg. T. quod sit coram Justic nostris, &c. ad respondend. L. de plito. quod ipse simul cum W. Epo. C. & M. permittant ipsum præsentare idoneam personam ad Ecclesiam de B. quæ vacat & ad suam spectat donationem & ad ostend. quare non fuit, coram Justic' nostris, &c. a die, &c. postquam sum' fuit, Et habeas ibi nomina pleg. & hoc bre. &c. Test, &c. Rast. Entr. 520.

This Writt may be made returnable die Martis, Mercur. or any other day in the Assise week in Chester.

The Grand Distress is thus,——

Distringas.

Rex, &c. Præcipimus tibi quod Distringas T. per omnes Terr. & Catal. sua in Balliva tua ita quod nec ipse nec aliquis per ipsum ad ea man. appon. donec aliud a nobis inde

indē habuer' præcept. & quod de exitibus nobis inde reſpond. Et quod Habeas Corpus ejus coram Juſtic. &c. ad reſpond. W. de placito quod ipſe ſimul cum W. Epo. &c. Et ad audiend. judic. ſuum de plur. default. Et habeas ibi hoc bre. Teſt. &c. Reg. 1.

20. In ſome Caſes the Trial of the Iſſue in this Action ſhall be by the Certificate of the Biſhop, as 1, Plenarty for the ſpace of Six months, Raſt. Entr. 498. b. Brief. 1. 2. Whether the Incumbent were Inſtituted at the Preſentation of ſuch an one? Raſt. Entr. 533, 534. And ſo I conceive it ought to be upon an Iſſue of Reſignation or Deprivation. Trial ſometimes by Certificate of the Biſhop.

20. The Judgment in this Action is, Quod I. S. recuperet verſus L. præſentation. ſuam ad Eccleſiam prædict. pro defalt. (ſi ſit per default) Et habeat bre. Epo. loci illius Ordinario quod non obſtan. reclamatione præd. L. ad præſentacon. præd. I. S. ad Eccleſiam præd. idoneam perſonam admittat & idem L. in mia. &c. Raſt. Entr. 507. a. Judgment.

21. Obſerve theſe Rules, when a Writ to the Biſhop ſhall be had and Judgment given. Rules where a Writ to the Biſhop.

1. If the Defendant makes default at the Grand Diſtreſs, the Plaintiff ſhall have a Writ to the Biſhop, Vid. Raſt. ibidem. Moore Rep. 81. n. 214. This is by force of the Stat. of Marl. c. 12. but then he muſt make a Title by Moore ibidem. 10 H. 6. 4. b. Where the Plaintiff ſhall have a Writ to the Biſhop.

2. If there be ſeveral Defendants, and one make default, Judgment and a Writ to the Biſhop ſhall be awarded againſt him, with a Ceſſ. Executio till the Plea be ended as to the other. Raſt. 507. a. 4. 25 E. 3. 34. b. Ceſſat executio where.

3. When the Plaintiff recovers by default, he muſt have a Writ to inquire of the damages (if he will inſiſt upon it; otherwiſe he may releaſe them) with a Ceſſ. bre. Epo. till the Return of the Writ of Enquiry, in which Writ of Enquiry there's a Command to inquire of the three Points before mentioned, & Eccleſia. ſit plena? &c. Raſt. Entr. 507. b. 8. Where Plaintiff ſhall have a Writ to enquire of Damages.

4. In

Where Defendant may be an Actor, and may have a Writ to the Bishop.

4. In this Action both Plaintiff and Defendant as the Case may be, may be Actors, and may have a Writ to the Bishop and a Writ to inquire of Damages, as 1. If the Plaintiff be Non-suited, Rast. Entr. 508. a. Quær. whether the Defendant must not make a Title first. Co. Lib. 7. 27. b. 9 H. 6. 4. b. 2 H. 5. 6. 11 H. 6. 8. Hob. Rep. 163. 2ly. If a Verdict be given for the Defendant. 19 H. 6. 31. 18 E. 3. 15. 3ly. Upon demurrer to the Count, and adjudg'd for the Defendant, the Defendant shall have a Writ to the Bishop, because the Title of the Defendant appears by the Count. Dyer 24. pl. 153. 4ly. If the Writ abate for Misnosmer of the Plaintiff or Defendant, insufficiency, false Latin, the Defendant shall have a Writ to the Bishop. 31 H. 6. 15. Co. Lib. 7. f. 27. Portman's Case. 5ly. If the Writ abate by the act of the Plaintiff, the Defendant shall have a Writ to the Bishop, as if the Plaintiff be made Knight after the Writ purchas'd. Co. ibidem. 6ly. If the Bishop pleads that he Claims nothing but as Ordinary, &c. the Defendant shall have a Writ to the Bishop with a Cess. Executio, &c. 17 E. 3. 71. 17 H. 7. Kell. 43.

Note.

Note, all this concerning a Writ to the Bishop for the Defendant, is to be understood when the Incumbent of the Patron Defendant is not admitted, for if he be admitted, then the Defendant is meerly of the defensive part and not an Actor. Vid. Vaughan's Rep. 8. Hob. 193. Wincomb vers. Puleston.

Incumbent to be removed by the Judgment.

5. If the Incumbet be made a Party to the Writ, he shall be removed by the Judgment. Co. Lib. 6. Boswell's Case 51. And so all others Presented and Instituted pending the Writ. And who is Instituted and Inducted, and by whom, and when, appears by the return of the Writ of Inquiry. Rast. Entr. 508. 9. But such as come in pendente lite, and are no parties to the Writ, are not to be remov'd by the Judgment, but by a Scire fac. because he shall not be put out without answer; and therefore Boswell's Case in this Point is denied to be Law. See Cro. 2. part Lancaster vers. Lowe. Siderfin's Rep. 14 Car. 2. P. 94.

The Writ to the Biſhop,——

Rex, &c. M. Arch. Eborum ſalutem Sciatis quod R. ar' in Cur' noſtra coram Juſtic' noſtris apud W. recuperavit præſentationem ſuam ad Eccleſiam de W. in Com. B. qu' vac' & ad ſuam ſpectat donation' verſus H. Mil. & L. Cler. per bre' noſtrum de Quare Impedit, Et ideo vobis mandamus quod non obſtant' reclamatione prædict' H. & L. licet præd' R. ad Eccleſiam præd. Admiſſus, Inſtitutus & Inductus exiſtit eundem R. ab eadem Eccleſia amoveat' Et ad Eccleſiam ill' ad præſentation' ipſius R. idoneam perſonam admittas, Et qualiter hoc Mandat. noſtrum execut' fueritis conſtare fac. Juſtic' noſtris, &c. Teſt, &c. Raſt. Entr. 507. b. 7. The Writ to the Biſhop.

The Writ of Inquiry of Damages is directed to the Sheriff, and is as followeth, viz.——

Rex, Vic' ſalutem Scias quod A. in Cur' noſtra coram Juſtic' noſtris apud W. per conſideration' ejuſdem Cur. recuperavit verſus B. Epiſc. Winton' C. Mil' & D. Capellanum præſentationem ſuam ad Eccleſiam de M. vacantem, & ad ſuam donationem hac vice ſpectan' unde idem A. in eadem Cur' noſtra tul' bre' de Quare Impedit verſus eos & quia neſcitur utrum Eccleſia prædict' plena ſit necne nec quantum Eccleſia præd' valet per Annum juxta verum valorem inde tibi præcipimus per Sacrament' duodecim proborum & legalium hominum de Com. tuo diligenter inquir' utrum Eccleſia præd. ſit plena necne & ſi ſit plena ad cujus vel quorum præſentationem eadem Eccleſia plena exiſtit, Et quantum tempus elabitur a tempore quo Eccleſ. præd' ultim' cepit vacar' Et quantum Eccleſia præd' valet per Annum juxta verum valor' ejuſdem & inquiſitionem quam inde fecer' Scire fac' Juſtic' noſtris apud W. &c. ſub ſigillio tuo & ſigillis eorum per quorum Sacrament' inquiſitionem ill' fecer' Et habeas ibi nomina eorum per quorum ſacrament' inquiſitionem ill' fecer' Et hoc bre' Teſt. &c. Raſt. Entr. 507. 8. The Writ of Inquiry.

Note, this is upon a Recovery by default, upon the grant of the next avoidance, but differs not from others, ſave in theſe words (hac vice) ſpectan'.

No Writ of Inquiry upon a Verdict.

If the Plaintiff Recover upon a Verdict, then there needs no Writ of Inquiry of damages, for then the Jury at the Barr shall inquire of the same Points, as upon the Writ of Inquiry. Vid. Entry upon a Verdict, Rast. Entr. 508. 9.

The Entry of a Judgment upon Default at the Return of the Grand Distress.

Entry of Judgment upon Default.

I. Mil. per N. Attornatum suum obtul' se quarto die versus B. & D. de placito quod permittat ipsum præsentare idoneam Personam ad Ecclesiam de O. qu. vacat & ad suam spectat donationem, Et ipsi non ven', &c. & præcepr' fuit Vic' quod Distring' eos, &c. Et quod de exitibus, &c. Et quod haber' Corpus ejus hic ad hunc diem scilicet' ——— Et Vic' modo mand' quod District' est per Catall' ad valenc', &c. Et manucapt' per, &c. ideo ipsi in mia', &c. Et Consideratum est quod præd' I. recuperet versus præd' B. & D. præsentationem, &c. Et habeat bre' &c. as before is said, Vid. Rast. Entr. 507. Judgmt. 2. & ibidem. 3. 4.

Though many Books (as I have before observed) say that upon default the Plaintiff shall not have a Writ to the Bishop without making a Title, i. e. without a Count, yet the Entries in Rastall are without.

The Record following I have the rather here inserted, not only because it proves the Antiquity of the Jurisdiction in the County Pallatine of Chester, as other Records here before more Antient, but for that it serves to make out part of the Pedigree of the Booth's of Dunham in Cheshire, who are descended in a direct Line of Heirs males from Sr. Robert Booth mentioned in the said Record, concerning the Advowson of Winlesow which now belongs to the Trafford's.

Placita

Placita Com' Ceſtr. apud Ceſtr. coram Jacobo del Holt, Juſtic' Domini Regis ibidem die Martis prox' poſt Feſtum conceptionis beatæ Mariæ Virginis Anno Regni Regis Henrici quinti poſt Conqueſtum Angliæ Sexto. Ro. 24.

Ceſtr. ſſ. *Robertus del Bothe* in propria Perſona ſua ob' ſe verſus Galfridum Boſeley Cler' de placito quod ſimul cum Johannem de Legh del Bothes Vic' Ceſtr', Ranulpho del Hope, un' Coron' Hundred' de Northwico, Willielmo del Meoles Coron' Hundred' de Wyrehale, Richardo de Ridley Coron' Hundred' de Broxon', Johanne' Triket Coron' Hundred' de Edesbury, Ranulpho de Swetenham Coron' Hundred' de Bucklowe, Willielmo Brett & Thom. Bruyndeley Coron' Hundred' Wici Malbani & Johanne de Legh del Bache Coron' Hundred' de Macclesfield, permittat prædict' Robertum præſentare idoneam Perſonam ad Eccleſiam de Wilmeſlow qu' vac' & ad ſuam ſpectat donationem, &c. Et ipſe non ven' Et Præceptum fuit Vic' quod diſtring' eum per omnes Terr. &c. Et quod de exitibus, &c. Et quod Haber' Corpus ejus ad hunc Com' ſcilicet die Martis prox' poſt Feſtum Beatæ Mariæ, &c. Et Vic' modo mand' quod Diſtrict' eſt per Catall' ad valenc' ſex denar'. Et manucapt' per Johannem Fox. Willielmum Pye. Henric' Hert & Thom. Cutt. Ideo ipſi in mia', &c. Et ſuper hoc prædict' Robertus dic' quod quidam Willielmus Venables Mil' dudum fuit ſeiſit' de Maner' de Bolyn cum pertinen' ad quod advocatio Eccleſiæ præd' pertinen' & Maner' ill' de Domino Rege ut Comit' Ceſtr' tenuit in Capite per ſervitium Militar' & ad eandem Eccleſiam preſentavit quend' Thom' Forſt Cler' ſuum qui ad præſentationem ſuam admiſſus fuit & inſtitutus in eadem tempore pacis tempore Domini Richardi nuper Regis Angliæ Secundi poſt Conqueſtum & poſtea prædict' Willielmus Venables de Maner' præd' cum pertinen' ad quod, &c. obiit ſeiſit' poſt cujus mortem Maner' præd' cum pertinen' ſuis ad quod &c. ſimul, &c. deſcend' quibuſdem Alicie & Dulcie ut fil' & hæred' ipſius Willielmi Venables & tunc infra ætatem exiſtentibus per quod Dominus Rex adtunc Comes Ceſtr' præd' Maner' cum ſuis pertinen' ad quod, &c. in manibus ſuis ſeiſir' fecit ratione minor' ætatis præd' Alicie & Dulcie & poſtea quædam

Awarding of the Diſtreſs.

Deafult.

Count & mon. ſtr' Title.

1. Preſentment.

Richard. 2.

dam Johanna qu' fuit Uxor præd' Willielmi de Venables profecut' fuit coram Juſtic' & Camerar' Domini Regis adtunc Com' Ceſtr' in Scaccar' ſuo ibidem liberation' tertie partis Maner' præd' cum ſuis pertinen' ad quod, &c. nomine dotis ſu' ipſ' per mortem præd. Willielmi de Venables quondam viri ſui contingen' una cum tertia præſentatione ad Eccleſiam præd' cum accider' videlicet' quod præd' Alicia & Dulcia haberent duas præſentationes & præd. Johanna tertiam præſentationem cum acciderint & poſtea Dominus Rex tunc Princeps Walliæ & Comes Ceſtr' per liter' ſuas Patentes quarum dat' eſt apud Ceſtr' triceſimo die April' Anno Regni Domini H. nuper Regis Angliæ Patris Domini Regis nunc quarto conceſſit dilecto Aro' ſuo Olivero de Stanely cuſtod' duar' partium præd. Maner' cum ſuis pertinen ad quod, &c. ſimul, &c. per nomen omnium Terrar' & Tenementor' reddituum ſervitiorum feodorum reverſionum & advocation' cum pertinen' qu' fuer' præd' Willielmi de Venables per nomen Willielmi de Venables de Bolyn Mil' Habend' eidem Olivero cum omnibus exitibus & proficuis inde provenientibus uſque ad legitimam ætatem præd. Alicie & Dulcie & poſtea Eccleſia præd. per mortem præd' Thom' Forſt vacavit per quod pro eo quod præd. Alicia & Dulcia adtunc fuer' infra ætatem & in Cuſtod' præd' Oliveri, idem Oliverus præſentavit quend. Galfridum Boſeley Cler, ſuum ad eandem Eccleſiam qu. ad præſentationem ſuam admiſſus fuit & inſtitutus in eadem tempore pacis tempore Domini H. nuper Regis Angliæ Patris, &c. Et poſtea eadem Alicia cepit in virum quend. Edmund. de Trafford & præd. Dulcia cepit in virum quend. Robert. fil. Johannis del Bothe, & poſtea præd. Edmundus & Alicia, & Robertus fil. Johannis & Dulcia ad plenam ætatem præd. Aliciæ & Dulciæ modo debito profecut. fuer. liberationem præd. duarum partium Maner. præd. cum pertinen. una cum feodis & advocationibus præd. extra manus Domini Regis, Et poſtea præd. Edmundus & Alicia, & Robertus fil. Johan. & Dulcia per quoddam ſcriptum ſuum Cur. hic oſtens. cujus dat. eſt in Feſto Nativitatis Sancti Johannis Baptiſt. Anno Regni Domini Regis nunc quinto dimiſer' cuidam Johanni del Bothe hær. & aſſignatt' ſuis præd. duas partes Maner. præd. cum ſuis pertinen. una cum advocatione Eccleſiæ præd. ad terminum vigint. Annorum prox. dat. ſcript. præd. ſequen. & poſtea præd. Johannes del Bothe per quoddam ſcript. ſuum Cur. hic oſtens. cujus dat. eſt die lun. prox. poſt Feſtum Apoſt. Petri & Pauli Anno Regni Domini Regis nunc quinto

Grant del Gardſhip per Liter patent' 30 Apr' 4 H. 4.

Vacancy per mortem.

2. Preſentation' per Guardian'.

5. H. 5.

quinto dimiſit totum Stat. ſuum quem habuit in præd. du. partibus Maner. præd. cum pertinen. una cum advocatione Eccleſiæ præd. præfat' Roberto del Bothe in bri. præd. nominat. Et poſtea præd. Galfridus Boſeley coram Henric de Halſall Arch. Ceſtr. & Commiſſar. Magiſtr. Walter. Bullock Vicar. general. Johannis Epi. Coventr. & Lich. de Eccleſia præd. privatus fuit virtute cujus privationis Eccleſia præd. vacavit. & ea vacatio ad ipſum Robertum del Bothe virtute dimiſſionis præd. ut prædictum eſt ad Eccleſiam præd. ad preſens pertinet præſentare, Et præd. Galfridus de Boſeley ſimul, &c. ipſum Robert. del Bothe injuſte impedit, &c. Ideo Conſideratum eſt quod præd. Robertus del Bothe recuperet verſus præd. Galfridum de Boſeley præſentationem ſuam ad Eccleſiam pd. de Wilmeſlow per defalt. ipſius Galfridi de Boſeley, &c. Et habeat bre. Coventr. & Lich. Epo. loci ill. Dioces. quod non obſtan. reclam. ipſius Galfridi de Boſeley idoneam perſonam ad præſentationem pd. Roberti del Bothe ad Eccleſiam ill. admittat, Et pd' Galfridus de Boſeley in mia. &c. Et affer. pro Cur. ad xij d. Et ſuper hoc Robertus del Bothe pet. bre. ad inquir. de dam. Et ei conceditur returnabil. hic ad prox. Com. ſcilicet. die Martis prox. poſt Feſtum Sancti Hillar. prox. futur. &c.

Vacancy per deprivation.

Judgment per Default.

Bre Epo.

Bre de inquir' de dam.

By this Record moſt of the former Rules I have ſet down may be obſerved, and that here the Plaintiff makes a Title though Judgment be given by default.

Pleas in this Action.

1. THE pleading in this Action is very difficult by reaſon of the variety and incertainty of the Rules concerning it. And therefore my Lord Hobert adviſes Plaintiffs in Quare Impedit to name no more Defendants than needs muſt be, and particularly the Biſhop not to be named, if an Incumbent be Inſtituted before the Quare Impedit brought, for then the Biſhop can do no more hurt to the Plaintiff, for he can but Conſtitute pending the Quare Impedit. 2ly. Not to name more diſturbers than ſuch as are like to have reaſonable Titles; for every diſturber may make ſeveral Titles, or Confeſs and avoid the Plaintiffs Title, and if any paſs againſt him, he is Barr'd. Hob. Rep. 320.

Pleadings difficult in this Action.

Rules of pleading in this Action.

Some few Rules there are which may be useful. 1. In Abatement of the Writ, if the Patron be not named the Writ shall Abate, Hob. Rep. 316. Co. Lib. 7. f. 26. Hall's Case. 2ly. No such Church in the County, is a good Plea in Abatement. Co. Lib. 6. 65, 66. see false Latin, misnosmer: But the Defendant shall not have a Writ to the Bishop. Co. Lib. 7. 27. b.

Abatement.

Death of the Patron shall not abate the Writ. Co. Lib. 7. f. 26. Hall's Case.

If the Writ abate by the Plaintiff's own Act, as being made Knight, &c. the Defendant shall have a Writ to the Bishop. Co. Lib. 7. 27. b.

Barr. Several Pleas by Bishop, Patron, &c.

Now for Pleas in Barr, where the Writ is brought against Bishop, Patron and Incumbent, they may plead severally, several Titles if they please, but ordinarily the Bishop pleads, That he claims nothing but as Ordinary, &c. to free himself from disturbance and damages being recovered against him; and upon his Plea, the Plaintiff may demand, and shall have a Writ to the Bishop with a Cess. executio, till the Plea be decided against the other Defendants, Co. Lib. 10. 54. 2ly. The Patron may plead any Plea to shew his Title, or to barr the Plaintiff's Title. 3ly. The Incumbent at Common Law could not plead any Plea which concerned the Right of the Patronage, but now by the Equity of the Statute of 25 E. 3 c. 7. he may. Co. Lib. 7. 26. Hall's Case, 4 H. 8. Dyer 1. Hob. Rep. 316. Neither could the Ordinary at Common Law plead any Plea to the Title of the Patronage before the said Statute, nor now since the Statute but in Case where he hath already Collated by Laps. Hob. Rep. 316. 319. 2ly. The Incumbent when he pleads in barr, must always say, that he is Persona impersonata, that it may appear to the Court that he is a Parson Instituted, and so able to plead. Co. Lib. 7. f. 26. a. 3ly. The Incumbent must say of whose Presentation he is Persona impersonata, that it may appear to the Court that he defends his own Title, and his Patrons. Hob. Rep. 320. And this is traversable. Hob. 321.

What Pleas Incumbent might not plead.

Stat. 25 E. 3. 7.

Parson must say he is Persona impersonata.

Of whose Presentation.

Plenarty, for the space of six months, is a good Plea in Bar to a Quare Impedit, Co. Lib. 6. f. 50. and in such Case the Patron is put to his Writ of Right notwithstanding the Statute of W. 2. Plenarty for six months, where a good Plea.

Note this Rule; when the Defendant traverseth any part of the Plaintiff's Count in a Quare Impedit, it ought to be such part as is both inconsistent with the Defendants Title, and being found against the Plaintiff, doth absolutely destroy his Title; and by this Rule a Man may be guided in that Point greately Controverted, when a seisin in gross or appendancy to a Manor shall be traversed, and when the Presentation. Vid. 10 H. 7. 27. Anderf. Rep. 1. p. 296. Lord Buckhurst's Case, 27 H. 8. 29. Hob. 301. Sr. Henry Gorndyes Case, Vaughan Rep. 8, 9, 10, 11, 12, 13. Rule in traverfing any part of the Plaintiff's Count.

If a Man come to a Benefice any other way than by the Death, Resignation or Deprivation of the last Incumbent, as by Simony and Presentation of the King, he may traverse the Vacancy by Death, Resignation or Deprivation. Cro. 2. P. 6. Raft. Entr. 485, 490. Traverse of the manner of the Vacancy.

For the Writ of Quo Jure, vid. antea.

CAP. V.

Quod Permittat.

1. THis is a Writ which lies in many Cases, as where a Man is disturbed in the injoyment of his Common, whether of Pasture, Turbary, Piscary or reasonable Estovers, of a Way, Nusance levied, &c. F. N. B. 123. Fr. It lies chiefly by the Heir of the Disseisee against the Disseisor or his Heir, or his Alienee who levied the Nusance by the Stat. of W. 2. c. 24. What.

2. This

A Writ of Right in its nature.

2. This Writ is a Writ of Right in its nature, and as such might come under the Title of Writs of Right before. At Common Law it lay not for Tenant for life, by reason whereof, and that there was great delay therein, the Stat. of W. 2. c. 25. was made, which gave an Assise of Novel disseisin for profits apprender, as Estovers, Corodies, Toll, Passage, Pannage, Custod' Parcar', Commun' Piscar', Turbar', &c. which lay not at Common Law.

Original.

The Writ follows, viz.——————Rex, &c. Vic. salutem. Præcipe A. quod juste, &c. permittat B. habere communiam Pastur. in N. qu. pertinet ad liberum Tenementum suum in eadem Vill. vel al. de qu. idem A. vel W. Pater vel Mater, &c. præd. A. cujus hæres ipse est injuste disseisivit R. Patrem vel, &c. præd. B. cujus hæres ipse est postquam, &c. (now infra sexagint. Annos.)

As a Writ of Entry.

This Writ is in nature of a Writ of Entry Sur disseisin done to the Ancestour. Reg. 155. b.

As a Writ of Right.

Sometimes it is meerly in the Right, and then it is in the (Debet) thus,——————Rex, &c. Præcipe, &c. habere communiam Pastur. in C. qu. pertinet, &c. vel aliter quam habere debet ut dic. &c.

Count.

And in this Writ he shall Count as in a Writ of Right, and joyn the Mise upon the meer Right, and Battle lies. Reg. 156. a. F. N. B. 124. a. Fr.

There's likewise a Quod permittat in the Debet and Solet, and this is in the Possession to be brought of his own Possession, and this he Counts as in a Writ of Entry. Reg. 156.

Counts.

Vid. The Counts for a Way, Common of Pasture, Estovers, in Rast. Entr. 538, 539. a.

View.

View, but not Voucher, lies in a Quod permittat. F. N. B. 297. Eng. in the Margent. 2 H. 4. 13. 45 E. 3. 8. Tit. View.

Proces.

The Proces is Summons, Attachment and Distress, and if Nihil be return'd, a Capias. F. N. B. 124. b.

This Writ is now out of use, for at this day all Actions for Ways, Commons, Nusances, and the like are turned into Actions upon the Case, or the Right may be tried upon Actions of Trespass. Out of Use.

Note, this Writ is Vicontiel, and may be sued in the County by Justicies as well as in the Common Pleas. F. N. B. 123. Fr.

For the Writ De Medio. vid. f. 154. And De Consuetudin. & Servitiis. f. 150. And Secta ad molendinum f. 156.

Pleas in Quod Permittat.

He may plead several Pleas, according to the nature of the Action that is brought.

If it be brought in the Debet in the nature of a Writ of Right, whether for a Way, Common, Estovers or the like, the Mise may be joyn'd upon the meer Right. Mise joyned.

If it be brought in the nature of a Writ of Entry sur disseisin, if it be for Common, he may plead the holding of the Land in severalty, and traverse the Common, or traverse the disseisin. Rast. Entr. 539. Traverse of the Common.

If it be in the nature of a Writ of Entry for Common, or a Way, &c. he may traverse the Prescription for the Common or Way. Rast. Entr. 538. b. Traverse of the Prescription.

CAP.

CAP. VI.

Warrantia Chartæ.

What.

1. THis Writ lieth where a Man is Infeoff'd by Deed with Warranty, and is impleaded in an Assise, or Writ of Entry in nature of an Assise, or any other Action wherein he cannot Vouch, then he shall have this Writ against the Feoffor or his Heir. F. N. B. 134. Fr.

Who may have it.

2. Tenant for Life or in Tail rendring Rent, may have this Writ against him in Reversion, though they have no Deed, therefore (unde Chartam habet in the Writ) is not material; for a Reversion and Rent reserv'd maketh a Warranty. So other Cases there are which make a Warranty, for which, vid. F. N. B. 135. Fr.

Lies pendente placito.

Where the party must Vouch.

3. Note, a Man may have a Warrantia Chartæ, though he be impleaded in an Action wherein he may Vouch; This is to be understood that he may have a Warrantia Chartæ pendente placito, and if he recover his Warranty against him, and after lose the Land, he shall have an Haber. fac. ad Valenciam against him that warranted without a Scire fac. But if the Warrantia Chartæ be brought before, and he have recovered his Warranty, then if an Action be brought against him for the Land, he must Vouch if he can Vouch, or have a Scire fac. against him that warranted upon the former Judgment of Recovery of his warranty. But if an Action be brought, and the Land lost before any Warrantia Chartæ be brought, and he did not Vouch the warrantor (if it were an Action wherein he might Vouch) he shall not have a Warrantia Chartæ afterwards, and so is F. N. B. 134. 135. Fr. to be understood.

Warr. Chartæ quia timet.

Recovery in Value from the Test of the Warr. Chartæ.

4. A Man may have a Warrantia Chartæ quia timet before any Action brought, though the Writ does suppose that he is impleaded, and if he recover his warranty, then if he be afterwards impleaded and lose, he shall Recover in Value such Land as the Warrantor had at the time of the Test of the Warrantia Chartæ; but in Voucher a Man shall render in Value only such Land as he had at the time of the

the Voucher. F. N. B. 135. Fr. 12 H. 4. 12. 10 H. 7. 13. See the Case of Sr. Henry Roll vers. Osborne, Hob. Rep. 21, 22. &c. for the learning in a Warrantia Chartæ. And Moore Rep. 859. some good Observations, and the same Case Leon, 4. P. 250. Where from the time of the Voucher.

5. The Writ is as followeth, ——— Rex, &c. Præcipe A. quod juste, &c. Warr. B. un. Mess. &c. cum pertinen. in L. quod tenet & de eo tenere clam. & unde Chartam suam habet (vel Chartam H. Patris vel Matris) cujus hæres ipse est ut dic. Et nisi, &c. Original.

6. The Count is various according to the particular Case of the Plaintiff, the Warranty sometimes arising upon a Deed, sometimes upon a Fine made by the Defendant or his Ancestours to the Plaintiff or his Ancestours: See for the Count. Rast. Entr. Garranty de Chaters. 396. b. 397. a. b. 398. a. b. Co. Entr. 691, 692. Count.

7. The Process is Summons, Attachment and Distress infinite, and upon a Nihil, a Cap. as in a Writ of Covenant, for this Writ is in some respects personal, in nature of a Writ of Covenant. 4 E. 2. Garrant. Chart. 29. for he shall Recover both in Value and Damages. If default be made after appearance, a Distringas peremptory is awarded in nature of a Petit Cape. Process.

8. The Judgment in this Action is, That the Defendant shall warrant the Land and likewise Damages to the Plaintiff, unless it be brought Quia timet, before any Action brought against the Plaintiff, for in that Case he shall not Recover damages, though he must declare ad damn' in his Count. Hob. Rep. ibidem. Co. Entr. 692. a. Judgment.

This Action is brought rarely, though sometimes at this Day it may be, for I remember one about 20 or 22 Years agoe before the Justices of Chester, between Sr. George Warburton Baronet Plaintiff, and John Brerewood Esq; Defendant, which was Confessed as I think. I conceive it was about 15 or 16 Car. 2. Another there is, the last Sessions at Chester Assizes, April 10 W. 3.

Pleas in this Action.

(Non dedit &c.) The general Plea in this Action is, (Non dedit. Non conceſſit) Co. Entr. 692.

Forfeiture. 2. Note, the Pleading in Raſtall Entr. 398. b. where the Defendant pleads that he who made the warranty claim'd under him who was but Tenant for Life, who levied a Fine to the diſinheriting of him in Reverſion, and that he in Reverſion Entred for the Forfeiture upon the Plaintiff, and the Plaintiff after Entred and diſſeis'd him in Reverſion, and demands Judgment, &c. Quær. the Strength of this Plea where the Point lies to barr him of his Warrantia Chartæ. It ſeems to me to lie in the change of the Eſtate for the Diſſeiſee Entring upon the Plaintiff before the Writ of Warrantia Chartæ brought, and the Plaintiff Reentring upon him, is a Diſſeiſor, and conſequently is in of another Eſtate than that to which the warranty was annexed, for by the Entry of him in Reverſion, the Eſtate that was wrongfully had by the Fine, was avoided, and conſequently the warranty. This may appear by Hob. 26. Sr. Henry Roll's Caſe.

CAP. VII.

Curia claudenda.

What. 1. This is a Writ lies for him who is Tenant for Life, or has other Eſtate of Freehold in Land, and he who has Land next adjoyning, ought to incloſe his Land, and will not, to the Nuſance of the Plaintiff. F. N. B. 127. French.

For whom. 2. This lies only for him that has a Freehold, and not for Tenant for Years. F. N. B. ibidem. and againſt him whoſe Cloſe is next adjoyning to the Plaintiff's Land.

*

3. This

3. It may be brought either in the County Court by Justicies, or in the Common Pleas. F. N. B. ibidem. Reg. 155. Where to be brought.

4. The Writ followeth, viz. ——— Rex, &c. Præcipe A. quod juste, &c. claudat Curiam suam in N. qu. aperta est ad nocument. liber. Tenement. B. in eadem Villa (vel in alia) quam claudere debet & solet ut dic' Et nisi, &c. Original.

5. The Count sets forth how the Plaintiff is seised of such Land, and the Defendant of such Contigue adjacen to the Plaintiff's Land, and how he ought to Inclose, and by reason of Non-closure the Cattle of the Defendant come into the Plaintiff's Land. Vid. Rast. Entr. 141, 142. Cur. claudend. Count.

6. View lies in this Writ. Rast. ibidem. The Process is Summons, Attachment, and Distress, and upon Default after Appearance a Distringas, in nature of a Petit Cape, and then if he do not appear and save his default, a Writ of Inquiry of damages shall be awarded. 13 R. 2. Cur. Claud. 3. F. N. B. 128. Fr. View. Process.

7. The Judgment is, That the Defendant shall Inclose, and the Plaintiff shall recover damages, and he shall be distrain'd per omnes Terr. till he Inclose. F. N. B. ibidem. Judgment.

This Writ is now much out of use, and turned into an Action upon the Case to Recover Damages from time to time.

Pleas in this Action.

1. Non-tenure, may be pleaded to the Writ, for it must be brought against him that is Tenant of the Freehold. Rast. Entr. 142. 2. Non-tenure.

2. In Barr (if the Inclosure be grounded upon a Prescription) the Defendant may traverse the Prescription. Rast. ibidem. Prescription traversed.

CAP. VIII. Partitione faciendâ.

What. 1. IS a Writ to compel those that hold Lands in Common insimul & pro indiviso, to divide the Lands in severalty by Meets and Bounds, as Coparceners and Heirs in Gavelkind at the Common Law; Tenants in Common and Joynt-tenants of Inheritance by the Statute of 31 H. 8. 1. and of an Estate of Freehold or for Years by the Statute of 32 H. 8. c. 32. Lit. Sect. 247.

By whom. 2. It lies by one Coparcener against another, or by one against Three, or Two against Two, if there be four, and so against all the others that will not Consent by them that do Consent. Lit. Sect. 247. It lies not for Tenant by the Courtesie. Reg. 76. b. Tenet always implies a Tenant of the Freehold, and therefore if one of the Coparceners make a Lease for Life, it cannot be brought against him for that Land, because in that Case, they do not hold insimul & pro indiviso, and then the Writ must be against the Tenant of the Freehold. 4 H. 7. 9. Co. Lit. 167. It lies against Tenant by the Courtesie; but to have it perpetual, he must pray in Aid of the Heir in Reversion. Reg. 76. b.

Original. 3. The Writ is thus,——————Rex, &c. Vic' C. salutem, Si A. fecer. &c. tunc. sum. B. quod sit, &c. ostensur. quare cum iidem A & B. insimul & pro indiviso teneant tres Acr. Terr. &c. cum pertinen. de hæreditate qu. fuit M. Patris vel Matris præd. A, & B. cujus hæred. ipsi sunt in I. idem B. partitioni inde inter eos secundum legem & consuetudinem Regni nostri Angliæ faciend. contradic. & eadem fieri non permittit minus juste ut dic. Et habeas, &c. T. &c. Reg. 76. a.

The like Writ of Partition by a Man and his Wife against a Third Coparcener, where the Husband purchased the part of the Second Coparcener. Reg. ibidem. a. b.

4. The

4. The Count in Partition in the several Entes, Vid. Rast. Entr. 449. 450. 451. between Tenants in Common and Joynt-tenants per Statute, Vid. Co. Ent. Hil. 42 & 43 Eliz. b. Between Joynt-tenants for Years. Ent. 458. b. 459. a. Count.

5. The Process is Summons, Attachment and Distress infinite. F. N. B. 62. Fr. &c. Process.

6. Aid lies in this Action which may be Counterplawed, and if it be found against the Defendant it is Peremptory, Quod partitio fiat, &c. Aid.

The Tenants may have several Essoins, every one, one Essoin, as in other Real Actions, though no Land be demanded. Hob. Rep. 8. Essoin.

7. There are two Judgments in this Action. 1. One that the Partition shall be made, viz. ——— Quod Partitio fiat inter partes præd. de Tenement. præd. cum pertinen. Lit. Sect. 248. Co. Lit. 167. 2. The Second Judgment is ——— Ideo Consideratum est per Cur. quod partitio facta & stabil. imperpetuum teneat, &c. Co. Lib. 11. f. 49. Metcalf's Case. Co. Lit. 169. a. Two Judgments in this Action.

8. Upon the first Judgment goes out a Judicial Writ, as an Execution to the Sheriff to make Partition, which is as followeth, viz. ——— First Judgment.

Rex, &c. Vic' C. salutem Cum A. nuper in Cur. nostra coram, &c. sum. fuit ad respondend' I. H. de placito quare cum iidem A. & I. H. insimul & pro indiviso ten. xx Mess. &c. and so recite the Writ and first Judgment, then proceed. ——— Ideo tibi præcipimus quod assumpt' tecum xij liberis & legal' hominibus de Vicin' de C. per quos rei veritas melius scir' poter' in propria persona tua acced' ad Tenementum præd. cum pertinen' Et ibidem per eorum Sacram' in presentia partium præd. per te premuniend' si interesse voluer' prædict' Tenement' cum pertinen' per Sacrament' probor' hominum prædict' habit' respect' ad verum valor' eorund' in duas partes equal' partir' & dividi & un' partem partium illar' præfat' I. H. & alter' partem inde præfat' A. tenend' in seperalitat' liberari & assignari Bre' Vic' quod fiat partitio.

nari fac' ita quod neuter prædict' I. H. & A. plus habeat in parte sua de hæreditate prædi' quam habere debeat & ad ipsum pertin' habend' ita quod pd' I. H. de proparte ipsius I. H. & præd. A. de proparte ipsius A. ipsos de hæreditate ill' contingen' se appruare possunt & partitionem ill' distincte & aperte habeas coram, &c. sub sigill' tuo & sigill' eorum per quorum Sacrament' partition' ill' fecer' Et habeas ibi nomina eorum per quorum Sacrament' partionem ill' fecer' Et hoc Bre, Test. &c.

Inquisition. Upon the Return of this Writ, the Sheriff returns an Inquisition (annexed to the Writ) of the Partition, which, Vid. Rast. Entr. 452. a. b. And then upon motion to the Court the Second Judgment is given, Quod partitio fit stabilis, &c.

This Writ is commonly brought by Consent, and Confessed.

Non infimul tenuer' is the general Issue in this Action.

There's now an Act, 8 & 9 W. 3. which impowers the Court to examine the matter, and Enter Judgment if the Tenant in Possession does not appear within 15 days after the Return of the Attachment, having had 40 days notice before the Return. See the Statute.

CAP.

CAP. IX.

A Writ of Covenant to Levy a Fine.

1. THis Writ is in the Reality, and lies where a Man Covenanteth to Levy a Fine to a Man and his Heirs of Lands or Hereditaments, he to whom the grant is made, shall have a Writ of Covenant. F. N. B. 140. Fr. What.

This Writ is in ordinary Practice, and brought by Consent for the assurance of Lands.

The Writ is as follows, viz——————Rex, &c. Vic C. salutem, Præcipe A. quod teneat B. Conventionem inter eos fact' de Maner' &c. de N. cum pertinen', &c. vel de un' Mess. &c. in M. Et nisi, &c. Original.

Note, the same Order in the particulars must be observed, as in a Præcipe quod reddat. Reg. 165.

2. Upon this Writ when it is taken forth, a Fine is paid in the Hamper to the King, called the Præ-Fine, (as in other Real Writs) Co. 2 Inst. 511. it is vis. viijd. for every Five Marks of the Yearly value of the Land. In Chester it is paid to the Seal-keeper of the Exchequer at the Sealing of the Writ, and he Indorseth upon the back of the Writ what the Land is valued at upon a Composition, viz. Tenement' infrascript non exced' vi l. per Annum, vel plus. Præ-Fine.

There's no other King's Silver paid in Cheshire, for there is no Post-Fine (which is properly the King's Silver) paid there. But there's an old Entry of xxij d. entred of Course upon the King's Silver Roll, under the Entry of every Præ-Fine in the Roll thus,——————De eod' B. pro denar' vocat' le King's Silver——————xxij d. And the Entry of the Præ-Fine in the Roll in the Prothonotaries Office is thus, ——A dar Dom' Regi sex solid' & octo denar' (vel plus) pro licentia concordand' cum C. de un' Mess. &c. in M. unde habet Cyrogr'——vj s. viij d. Post Fine. No Post Fine in Chester. xxij d.

It

Which is the King's Silver in Chester.

It has been a great Question in Chester whether of these Two last mentioned was accounted the King's Silver, for the xxij d. called the King's Silver, does not answer the proportion of the Post Fine (which is the King's Silver) which should be as much, and half as much as the Præ-Fine. Co. 2 Inst. 511. And the Præ-Fine is Entred (as aforesaid) before the Justices of Chester, as if it were the King's Silver, for it is (pro licentia Concordand'.)

Upon the whole matter I conceive that which is Entred as the Præ-Fine is the King's Silver, and that by the Custom of the County Palatine of Chester no other was due to the Earl, and the Ground of this Conception is, because it is Entred as the King's Silver is at Westminster, scilicet (pro licentia Concordand') and likewise because its Entred in the Court of the Great Sessions at Chester before the Justices of Chester, upon a Roll by the Prothonotary as aforesaid, whereas the Præ-Fine is never Entred in the Common Pleas, but only the Post Fine. When, or upon what ground the xxij d. came to be Entred, I cannot determine, but it may be after the Earldom came to the Crown for more caution, because the King's Silver was a Prerogative due to the Crown, such a small Sum was thought fit to be Entred under the other as aforesaid, for the xxij d. was not always the Sum; for I find 26 E. 1. Ro. Cestr. xij d. pro licentia Concordand', neither is it in any Roll in Chester before the Justices Entred, beyond the time of Queen Elizabeth as I think.

Entring the King's Silver in Chester.

It has been an antient Usage in Chester when a Fine is acknowledged in the Vacation between the Two Sessions, to bring the Writ, Præcipe and Concord into the Prothonotary's Office to Enter the Præ Fine and the xxij d. which is Entred in a Paper Book in the Office, and this has been taken as an Entry of the King's Silver, to prevent the avoiding of the Fine, in Case the Party Deforc' shall die before the next Assises following.

3. At Common Law every Fine was to be acknowledg'd in Person in open Court, but now by the Statute of Carlile, 15 E. 2. in Case of Sickness, Age, &c. other Persons may take the Fine, and upon this Statute is grounded

the

the Dedimus poteſtatem to other Perſons to take the Fine. 2 Inſt. 512. The manner of taking a Fine both in Perſon before the Juſtices and by Commiſſion, is well known by daily practice. Vid. Weſt's Preſid. 39. The manner of Levying a Fine in Cheſter. Dedimus Poteſtatem.

4. There are two ſorts of Fines. 1. Executed, or 2. Executory. Executed, are either 1. Sur cognizanzs de droit come ceo que il ad de ſon done, &c. which is the higheſt and moſt principal Fine; or 2ly. Sur Releaſe, Confirmation or Surrender, Co. 2 Inſt. 563. How many ſorts.

Executory ſur Grant & Render, ibidem.

The Fine Executed, ſuppoſeth the preſent Eſtate in the Cognizee by ſome precedent Feoffment, Grant, &c. and the Cognizee needs not Enter or have an Haber' fac' poſſeſſion. 41 E. 3. 14. Sur Cognizance de droit, &c.

Writ of Covenant to Levy a Fine.

The Executory is when no Eſtate is Executed in the Cognizee until Entry, Action or Execution by habere fac' ſeiſinam vel poſſeſſionem, ibidem. Co. 2 Inſt. 563. And this is the Fine ſur Grant & Render. And this is done by a Fine ſur Cogniſance de droit tantum, or other Fine Executed, and then the Cognizee (and at the ſame inſtant) grants and renders a Rent out of the Land or ſome other Eſtate in the Land, &c. to the Cognizor. Or where a Man grants a Remainder or Reverſion upon a particular Eſtate, there the Reverſion does paſs, but the Grantee cannot Diſtrain for Rent, or bring an Action of Waſt before Attornment. Lit. Sect. 579. Co. 1 Inſt. 309. a. ¶. b. †. Snr Grant & Render.

And to compel the particular Tenant to Attorn, the Cognizee ſhall have a judicial Writ call'd a Quid juris Clam. Co. 1 Inſt. 320. a. b. †. Leon. 2. p. 40. For the Proceſs in a Quid juris Clam. ſee Pl. Com. 209, 210, 211. Sanders vers. Freeman. Quid juris Clam.

So where a Man grants a Seignory by Fine, and the Tenant will not Attorn, the Grantee may have a Per qu. ſervitia to compel him. Co. Inſt. ibidem. & 252. a. ¶. Per qu. ſervitia.

Which is the King's Silver in Chester.

It has been a great Question in Chester whether of these Two last mentioned was accounted the King's Silver, for the xxij d. called the King's Silver, does not answer the proportion of the Post Fine (which is the King's Silver) which should be as much, and half as much as the Præ-Fine. Co. 2 Inst. 511. And the Præ-Fine is Entred (as aforesaid) before the Justices of Chester, as if it were the King's Silver, for it is (pro licentia Concordand'.)

Upon the whole matter I conceive that which is Entred as the Præ-Fine is the King's Silver, and that by the Custom of the County Palatine of Chester no other was due to the Earl, and the Ground of this Conception is, because it is Entred as the King's Silver is at Westminster, scilicet (pro licentia Concordand') and likewise because its Entred in the Court of the Great Sessions at Chester before the Justices of Chester, upon a Roll by the Prothonotary as aforesaid, whereas the Præ-Fine is never Entred in the Common Pleas, but only the Post Fine. When, or upon what ground the xxij d. came to be Entred, I cannot determine, but it may be after the Earldom came to the Crown for more caution, because the King's Silver was a Prerogative due to the Crown, such a small Sum was thought fit to be Entred under the other as aforesaid, for the xxij d. was not always the Sum; for I find 26 E. 1. Ro. Cestr. xij d. pro licentia Concordand', neither is it in any Roll in Chester before the Justices Entred, beyond the time of Queen Elizabeth as I think.

Entring the King's Silver in Chester.

It has been an antient Usage in Chester when a Fine is acknowledged in the Vacation between the Two Sessions, to bring the Writ, Præcipe and Concord into the Prothonotary's Office to Enter the Præ Fine and the xxij d. which is Entred in a Paper Book in the Office, and this has been taken as an Entry of the King's Silver, to prevent the avoiding of the Fine, in Case the Party Deforc' shall die before the next Assises following.

3. At Common Law every Fine was to be acknowledg'd in Person in open Court, but now by the Statute of Carlile, 15 E. 2. in Case of Sickness, Age, &c. other Persons may take the Fine, and upon this Statute is grounded

the

the Dedimus poteſtatem to other Perſons to take the Fine. 2 Inſt. 512. The manner of taking a Fine both in Perſon before the Juſtices and by Commiſſion, is well known by daily practice. Vid. Weſt's Preſid. 39. The manner of Levying a Fine in Cheſter. Dedimus Poteſtatem.

4. There are two ſorts of Fines. 1. Executed, or 2. Executory. Executed, are either 1. Sur cognizanzs de droit come ceo que il ad de ſon done, &c. which is the higheſt and moſt principal Fine; or 2ly. Sur Releaſe, Confirmation or Surrender, Co. 2 Inſt. 563. How many ſorts.

Executory ſur Grant & Render, ibidem.

The Fine Executed, ſuppoſeth the preſent Eſtate in the Cognizee by ſome precedent Feoffment, Grant, &c. and the Cognizee needs not Enter or have an Haber' fac' poſſeſſion. 41 E. 3. 14. Sur Cognizance de droit, &c.

Writ of Covenant to Levy a Fine.

The Executory is when no Eſtate is Executed in the Cognizee until Entry, Action or Execution by habere fac' ſeiſinam vel poſſeſſionem, ibidem. Co. 2 Inſt. 563. And this is the Fine ſur Grant & Render. And this is done by a Fine ſur Cogniſance de droit tantum, or other Fine Executed, and then the Cognizee (and at the ſame inſtant) grants and renders a Rent out of the Land or ſome other Eſtate in the Land, &c. to the Cognizor. Or where a Man grants a Remainder or Reverſion upon a particular Eſtate, there the Reverſion does paſs, but the Grantee cannot Diſtrain for Rent, or bring an Action of Waſt before Attornment. Lit. Sect. 579. Co. 1 Inſt. 309. a. ¶. b. †. Snr Grant & Render.

And to compel the particular Tenant to Attorn, the Cognizee ſhall have a judicial Writ call'd a Quid juris Clam. Co. 1 Inſt. 320. a. b. †. Leon. 2. p. 40. For the Proceſs in a Quid juris Clam. ſee Pl. Com. 209, 210, 211. Sanders vers. Freeman. Quid juris Clam.

So where a Man grants a Seignory by Fine, and the Tenant will not Attorn, the Grantee may have a Per qu. ſervitia to compel him. Co. Inſt. ibidem. & 252. a. ¶. Per qu. ſervitia.

Quem reddi-tum reddit.

And if the Rent be granted by Fine, and the Tertenant will not Attorn, the Grantee may have a Quem redditum reddit to compel him.

Quid juris clam, &c. out of Use per Stat. H. 8. de Uses.

But now by the Statute of H. 8. for Execution of Uses into Possession, these Writs of Quid juris Clam. Per qu. Servitia and Quem redditum reddit are out of use where Fines are Levied to Uses; for the Statute executing the Use to the Possession by the Præcipe and Concord before the Ingrossing of the Fine, the Cognisee cannot Compel the Tenant to Attorn, his benefit by a Quid juris Clam. being taken away by the Statute; therefore he shall distrain without Attornment, for these Writs at Common Law were always to be brought against the Tenants before the Ingrossing of the Fine. Co. Lib. 6. 68. Sr. Moyle Finches Case, Co. 1 Inst. 309. b.

CAP. X.

Writ of Deceit, Quod ei deforceat, Attaint, Forcible Entry, Redisseisin and Postdisseisin.

There are three things especially (that have relation to the giving Possession of Lands) that are great Enemies to Justice and the due Administration and Execution of Law. 1. Fraud. 2. Force. 3. Vexation.

Fraud.

1. For Fraud, is when a Man gains Possession by some undue means or contrivances in a Court of Record, i. e. procures a Judgment for him or a false Verdict, and so makes the Law a Patronage for his injustice. For Remedy in this Case, the Law has provided the Writ of Deceit, and Quod ei deforc' against a Judgment fraudulently had, and the Writ of Attaint against a false Verdict.

2ly. For

2. For Force, it is likewise odious in Law, and is when a Force.
Man will not wait an ordinary Course of Law for the gaining of his Possession, but will be his own Carver, both Judge and Party in his own Cause, and therefore takes Possession by Force and Strength of Arms. Against these, several Statutes have been made, as 5 R. 2. 7. 15 R. 2. 2. 8 H. 6. 9. 13 Eliz. 11. 21 Jac. 15.

3. Vexation, which is a great Contempt of the Law, when a Man will not rest satisfied with the Judgment the Law has given, but after Judgment and Execution will make new Entries and Disseisins upon the Recoverer, against which are provided the Writs of Redisseisin and Post-disseisin. Of these I shall observe something in their Order, and so Conclude this Tract of Real Actions. Vexation.

Sect. 1. Writ of Deceit.

1. When any thing is done deceitfully and fraudulently to the Damage of another in some Court of Record, as purchasing a Writ in my Name I knowing nothing of it, Confessing an Action, an Attorney making default fraudulently in a Real Action, whereby I lose my Land or other thing, in those and several other Cases; the Writ of Deceit lies. F. N. B. 95, 96. &c. Fr. What.

2. But I shall only speak of this Writ as it has relation to Real Actions, where the Possession of Lands or Hereditaments is unjustly or irregularly gain'd. And in that respect it lies where an Attorney by Covin makes default in a Real Action, whereby the Land is lost. Vid. Reg. 113. Fitz. N. B. says the Writ of Deceit lies against the Attorney. But Quær. whether it does not lie against the Attorney and the Demandant, and that the Tenant shall be restored to the Land? And I conceive it does.

3. It lies in a Præcipe quod reddat, where the Sheriff Returns the Tenant Summon'd, when as he was not summon'd, by which the Tenant loses the Land at the return of the Grand Cape. F. N. B. 232. Eng. And this Writ is to be brought against the Sheriff and him who recovered, and the Tenant shall be restored to the Land, ibidem. Where it lies.

Out of what Court.

4. It may be sued either out of the Common Pleas, or out of the Chancery, so it is either Judicial or Original, at the election of the Party. 2a. E. 3. Deceit. 6. F. N. B. 99. Fr.

Process. Venire fac'.

5. In this Case of losing by Default, the Writ of Deceit is in nature of an Audita Querela, and begins Questus est nobis, &c. And the Process against the Sheriff, Summons, Veiors, and him that recovered, is a Venire fac' in nature of a Summons contained in the same Writ, Rast. Entr. 222. a. b. But in other Writs of Deceit, the Process is Attachment and Distress, &c. F. N. B. 100.

When the Action fails. Summonors and Veiors.

6. If the Summoners in the Præcipe quod reddat and the Summonors and Veiors in the Grand Cape be dead, this Action fails. F. N. B. 99. Fr. If one Summonor and Veior be alive it is sufficient. 8 H. 6. 1. 18 E. 4. 1. F. N. B. 234. Eng. For the Trial must be by Examination upon Oath of the Summonors and Veiors. F. N. B. 99. Fr. 232. Eng.

7. For the Process, the Appearance of the Summonors, Sheriff, &c. and manner of the Examination, Vid. Rast. Entr. 222. b. 223. a. b.

Inquisition in the Original Writ.

8. By the Original Writ the Sheriff is Commanded to Return an Inquisition by the Oaths of 12 Men of the yearly value of the Land recovered, and when Judgment is given for the Plaintiff in the Deceit, he shall recover the yearly value from the time of the first Judgment, together with the Seisin of the Land. Rast. Entr. 222. b.

Scire fac'.

9. In a Scire fac' where a Man loses Land by Default, the like Remedy by Writ of Deceit, as in Case of Nonsummons in other Pleas of Land by the Statute of 2 E. 3. 17.

Quare Impedit.

10. So if a Man for want of Summons loses by Default in a Quare Impedit. 26 H. 6. droit. 15. 34 E. 1. droit. 57. Leon. 1. p. 294.

11. This

11. This Action in Case of losing by default is now worn out of Use, especially since the Statute of 31 Eliz. c. 3. which opens Sheriffs in Real Actions after Summons to make Proclamation of the Summons upon Sunday following, &c. And all Actions of Deceit are now generally turn'd into Actions upon the Case. Yet the Case may be so now, as this Action may of necessity be sometimes useful at this day; as in a Formedon or Writ of Dower, if the Attorney of the Tenant of purpose make default when the Tenant was duly summon'd, what other remedy has the Tenant but this Writ? or a Quod ei deforceat? or a Writ of Right? Stat. 31 Eliz. 3. Of the manner of Summons. Much out of Use.

Sect. 2. Quod ei deforceat.

1. This Writ lies for a particular Tenant of the Freehold, as Tenant for Life, Tenant in Dower, by the Courtesie, and Tenant in Tail where they lose their Land in a Real Action by default, whether they were duly summon'd or not. And this Writ is given by the Statute of W. 2. c. 4. For at Common Law such Tenants and the Tenant in Tail after the Statute de donis Conditionalibus were without remedy if they lost by default, and were duly summon'd, for they could not have a Writ of Right, which none but Tenants in Fee-simple could have. Co. 2 Inst. 350. Co. 1 Inst. 481. 674, 675. Where it lies.

2. If the Tenant be not duly summon'd, he may have his Writ of Deceit or this Writ of Quod ei deforceat at his election. F. N. B. 381. Eng. Deceit or Quod ei deforceat.

3. This Writ lies not upon a default of Nihil dicit, after appearance. Vid. le reason. Anders. 1. p. 271. Elmers Case. Cro. 3. p. 263. Owen's Rep. 101. Lies not upon Nihil dicit.

4. It lies against the Heir or Alienee of him who recover'd as well as against the Recoveror himself. Lit. Sect. 674, 675. Co. 2 Inst. 352. Against the Heir.

5. It lies not for the Heir of Tenant in Tail, but he must bring his Formedon. F. N. B. 382. Eng. Formedon.

The

Original. The Writ is thus, viz. ——— Rex, &c. Præcipe A. quod, &c. reddat B. qu' fuit Uxor C. un' Meſſ. cum pertinen' in L. quod clam' eſſe rationabil' dotem ſu' (vel quod clam') &c. & quod idem A. ei deforc' ut dic' &c. Reg. 171.

Original. For Tenant in Tail the Writ is as followeth, viz. ——— Rex, &c. Præcipe A. quod juſte, &c. un' Meſſ. &c. in L. quod clam' tener' ſibi & hæred' de Corpore ſuo exeunt' & quod præd' A. ei deforc' ut dic', &c. ibidem.

So for the Tenant by the Courteſie, and for Life, vid. ibid. b.

Defendant Actor. 6. This Writ is of the nature of the firſt Writ, ſo that the Demandant in this Writ being Tenant in the former, may Vouch as Tenant to the former Action: And the Tenant in this Action is as it were Actor or Demandant; for he pleads the former Recovery and ſets forth his Title, and ſays, ——(paratus eſt ad manutenend' jus & titul' ſu' præd', &c.) and then the former Action is revived, and the Demandant may Vouch, as is ſaid before, if Voucher lay in the former Action. Co. 2 Inſt. 351. 2 E. 4. 11. Co. 2 Inſt. 352.

Demandant may Vouch.

Voucher. Note, the Demandant in this Action can Vouch none but him in Reverſion. Co. 2 Inſt. 352.

Demandant & Tenant poent Vouch. And both Demandant and Tenant may Vouch. Co. ibi. 10 H. 7. 10.

There can be but one Voucher in this Action, and therefore the Vouchee ſhall not Vouch over. 10 H. 7. 29. 9. E. 3. 22. Co. ibidem.

7. The Count is thus, ———————

Count. W. de H. pet' verſus B. un' Meſſ. &c. in L. qu' clam' tener' ad term' vitæ ſuæ, Et præd. B. ei injuſte deforceat, &c. Unde dic' quod ipſemet fuit ſeiſit' de præd. Tenement' cum pertinen' in dominico ſuo ut de libero Tenemento tempore pacis tempore, &c. Capiend' inde Exples ad valenc', &c. Et in quam, &c. Et inde produc' Sectam, &c. Raſt. Entr. 537. a. b.

Note

Note, This Count the Demandant Counts that he was ſeiz'd of the Land for Life without ſhewing of whoſe Leaſe, &c. becauſe the Action is brought of his own Poſſeſſion, and this puts the Tenant in this Writ either to plead the former Recovery, and his Title or ſome other matter in Barr, for he may do either. Co. 2 Inſt. 351. 10 E. 4. 2. 29 E. 3. 47.

Vid. the Recovery pleaded, and Iſſue upon the Title: Raſt. Entr. 537. b. 1. 2.

8. The Proceſs in this Action is, Summons, Grand Cape, and Petit Cape, as in other Præcipe quod Reddats. Proceſs.

9. The Judgment is as in all other Real Præcipe quod Reddats.

Sect. 3. Attaint.

1. Attaint, is a Writ or Action where a falſe Verdict is given in a Plea Real or Perſonal, by Writ or Bill, then he againſt whom this Verdict is given may have this Writ. F. N. B. 252. Eng. What.

2. In this Action the Jury appears the firſt day, as in Aſſiſe or Juris Utrum. Vid. Raſt. Entr. 86. a. 88. a. 4.

3. This Writ is either Judicial or Original, i. e. it may be ſued out of the Com. Pleas, or King's Bench upon a falſe Verdict given in the ſame Courts, or out of the Chancery. F. N. B. 257. Quotuplex.

4. It muſt be brought againſt him that was Tenant or Defendant in the former Action; if it be in a Real Action, he muſt continue Tenant at the time of the Attaint brought, or it may abate. 6 Aſſ. 6. Againſt whom.

5. The Jurors likewiſe of the firſt Inqueſt muſt be attach'd to appear the firſt day with the former Defendant, and all this appears by the Writ.

For

For the Writ and Return both of the Jurors upon the Writ of Attaint, and of the first Inquest, Vid. Rast. Entr. 86. 2.

Process at Com. Law.

6. The Process against the Defendant at Common Law was Resummons, if he appear not the first day, and upon the Return of the Resummons the Jury shall be taken by default. Rast. Entr. 86. b. Now it's Summons, Resummons, and Distress infinite per Stat. 23 H. 8. c. 3.

Per Stat. 23 H. 8. c. 3.

Distring. vers. the first Jury.

7. The Process against the first Jury is a Distringas if they do not appear the first day, then at the Return of the Distringas, the Jury shall be taken against them by default. Rast. Entr. 86. b. Now Summons, and Resummons and Distress infinite per Stat. 23 H. 8. c. 3. And if upon the Distress neither Defendant nor Petit Jury do appear, yet the Grand Jury shall be taken per Stat. of H. 8. aforesaid.

Demand of Oyer.

8. Upon the Appearance the Defendant or Tenant and the former Jury may demand Oyer of the Writ of Attaint, and the Record upon which it is grounded, and if there be any variance, it may be pleaded in Abatement. 7 Ass. 5 Rast. Entr. 88. b. 5. & 89. a. b. And then upon demand the Plaintiff may shew the false Oath. Rast. ibidem.

Essoin.

9. The Tenant may Essoin the first day, but not after appearance no more than in an Assise of Mortdancester or Juris Utrum. Vid. supr. 7 Ass. 8 W. 1. 42. No Essoin per Stat. 23 H. 8. c. 3.

Entry of the Action.

10. The Entry begins thus,——Jurator' vigint' quatuor Mil' de Vicin' de E. ven. recognitur' si Jur' per quos quæd' Inquis' in Cur', &c. inter, &c. falsum fecer' Sacrament', &c. Reg. Entr. 89. a. b.

Judgment in Attaint.

11. The Judgment in Attaint at Common Law was dreadful, That the Plaintiff should be restored to all that he had lost; That the Petit Jury i. e. the Jury which gave the false Verdict should be Imprisoned, their Lands taken into the King's Hands, and wasted and destroyed, their Wives and Children turn'd out of their Possessions, and all their Goods forfeited

forfeited to the King, and themselves to be as Outlaws. 6 Ass. 7. Rast. Entr. 92. b, Judgment 1. Co. 2 Inst. 130.

12. But now the Rigor of this Judgment is altered, and several other Proceedings in Attaint by the Statute of 23 H. 8. c. 3. which is now the Rule for Attaints. Vid. Dyer 201. a. b. 3 Eliz. Co. 1 Inst. 294. b. * Leon. 1. p. 279. Judgment altered by the Stat. 23 H. 8.

13. By force of this Statute an Attaint now can be brought in no Court but in the Common Pleas or King's Bench. In what Court.

Time hath worn out the use of this Action, and therefore I shall not proceed in it any further. Though I conceive it may be very useful still where Juries give excessive damages. 12 E. 4. 5. Vid. Co. 1 Inst. 355. b. In what Actions it lieth not. Vid. Co. Lib. 11. Priddle and Napper's Case. In what Cases an Attaint lieth. Out of Use.

Sect. 4. Forcible Entry.

1. THE former Actions relate to Fraud and Deceit, and to remedy in such Cases, or where the Party is surprized, and Judgment obtain'd against him by default, or by false verdict. These now that follow relate to Force, against which the Law has provided suitable Remedies.

I shall not say any thing as to Indictments, for forcible Entries and Detainers, being not so proper to the nature of the present subject, but only set down something concerning Actions the Party may have in Case of such unlawful Entries.

2. But this is to be noted for a difference between an Indictment and an Action for the Force, as to the remedy of the Party. If the Entry be lawful, i. e. if the Party that Entred have good Title to the Possession, there no Action can be brought upon the Statutes; but the Party may be Indicted for the Force, and he who is Ousted (after such Indictment found) may be restored to his Possession. So that in such Case an Indictment now upon the Statute of H. 6. is better than an Action. 15 H. 7. 17. Br. Force 11. Difference between an Action and Force; Indicted.

Stat. against forcible Entry.

3. The Statutes against forcible Entries whether the Party have Right or not, are the 5 R. 2. c. 7. 15 R. 2. c. 2. & 8 H. 6. c. 9.

4. The Action of Treſpaſs upon the Statute of 5 R. 2. and 8 H. 6. we ſhall ſpeak to. And firſt the Declaration which ſhews the nature of the Action next followeth,——

Norfolk ſſ. Declaration.

A. Attatchiat' fuit ad reſpondend' tam Domino Regi qu' W. de placito quare cum in Statut' in Parliament' Domini Richardi Regis Angliæ, &c. Secundi poſt Conqueſtum apud Weſtminſt. Anno Regni ſui quinto tent' edit' inter Cetera ordinatum ſit quod nullus faciat ingreſſum in aliquam Terr' ſeu Tenement. niſi in Caſu ubi ingreſſus datur per Legem & in ill' Caſu non manu forti nec multitudine gentium ſed licito & quieto modo tantum & ſi quis in Contrarium' fecerit & inde debite Convict' fuer' per Impriſon' Corporis ſui puniatur & ad voluntatem Domini Regis redimatur prout in Statut' præd' plenius continetur, præd' A. in un' Meſſ. &c. ipſius W. in B. in qu' eidem A. ingreſſus non datur per legem &c. ibidem ingreſſum fecit in Domini Regis nunc Contempt' & ipſius W. grave dam' & contra formam Statut' præd', &c. Et unde idem W. qui tam pro Domino Rege quam pro ſeipſo ſequitur per I. L. Attornatum ſuum quer' quod præd' A. iv die Maij Anno, &c. in unum Meſſ. &c. ipſius W. in B. in qu' eidem W. ingreſſus non datur per legem, &c. ibid' ingreſſum fecit in Domini Regis nunc Contempt' & ipſius W. grave dam' & contra formam Statut' præd' unde dic' quod deteriorat' eſt & dam' habet ad valenc', &c. Et inde produc' Sectam, &c. Raſt. Entr. 534.

The Declaration upon the Statute of 8 H. 6. is in the ſame form mutat' mutand' reciting the Statute.

No Action given per Stat. 5 R. 2. but implied.

5. Note, no Action is given to the Party in expreſs terms by the Statute 5. R. 2. yet Actions are very frequent in the old Books; but I conceive the reaſon is upon a general Rule in Law, That where a Statute forbids a thing generally there he that is damnified by doing it, may have an Action upon the Statute. Co. Lib. 10. 75. b. As the Action of Scandalum Magnatum is grounded upon the Statute of 2 R. 2. c. 5. though no Action is given thereby expreſly to the Party. Modern Rep. 233.

Scandalu' magnatum not given per 2 R. 2. but implied.

6. But

6. But by the Statute of 8 H. 6. an Action is given expreſly, and treble Damages; and both Coſts and Damages ſhall be trebled. Vid. Leon. 1. p. 282. & 2. p. 52.

Action given per Stat. 8 H. 6. & treble Damages.

7. The general Iſſue (Non expulit & deſſeiſivit) may be pleaded in theſe Actions where the Party Entred peaceably. Raſt. Entr. 351. Or a ſpecial Plea in Barr, as in an Action of Treſpaſs, and muſt Conclude with a Traverſe Abſque hoc quod præd. A. eundem B. inde manu forti expul', &c. Raſt. Entr. 352. b. 4. which Traverſe is not to be anſwered by the Plaintiff, but the ſpecial matter only, which if it be found againſt the Defendant, the Force ſhall be implied, and not inquired of by the Jury; and if it be found for him, the Force ſhall not be inquired into, but the Defendant ſhall go quit, becauſe his Entry was lawful. F. N. B. 618. Eng. 15 H. 7. 17. 21 H. 6. 39. 9 H. 6. Entr. 15. 9 H. 6. 13. But the Force ſhall be inquired upon the general Iſſue. 15 H. 7. 17.

Where the Force ſhall not be inquired after.

8. He that hath been in Poſſeſſion three years peaceably, may hold with Force, and is not puniſhable by the Statute of H. 6. or any other Statute. Vid. le Proviſo in the Statute.

Poſſeſſion for Three years.

9. None can have this Action upon the Statute of H. 6. but he that is ſeis'd of an Eſtate of Freehold. F. N. B. 617. Eng. for none can be diſſeis'd but a Tenant of the Freehold. But the Action upon the Statute of 5 R. 2. a Tenant for years may have.

Muſt have a Freehold.

10. The Proceſs is the ſame as in an Action of Treſpaſs.

Proceſs.

11. Note, in an Action upon the Statute of R. 2. a Man cannot plead his Freehold generally, without making a Title, as he may in an Action of Treſpaſs; ſo note the difference. Kel. Rep. 46. 11 H. 7. 15. 27 H. 8. 26. F. N. B. 249. D.

Sect. V. Rediſſeiſin and Poſt-diſſeiſin.

What. 1. THis Writ of Rediſſeiſin and Poſt-diſſeiſin is in nature of a Commiſſion to the Sheriff and Coroners to hold Plea in ſuch Caſes, and the Entry is Pl'ita. apud C. coram H. Vic' S. aſſumpt' ſecum T. & D. Cuſtod' Placitorum Coron', &c. in Com' præd' tal' die & Anno, &c. Vid. Bulſtr. Rep. 2. p. 93.

Given per Stat. of Merton. Where it lies. Vid. Cro. 2. p. 335. 40 Aſſ. 30. F. N. B. 189. b. 2. The Writ of Rediſſeiſin is given by the Statute of Merton. c. 3: 20 H 3. and lies when after a Man has Recovered in an Aſſiſe, Land, Rent, or Common, &c. and has Execution, and then the former Diſſeiſor does again diſſeiſe him that Recovered; then he who is diſſeis'd ſhall have this Writ directed to the Sheriff, Commanding him that taking with him the Coroners of the County, they go to the place, and there by the firſt Jurors and others, they take an Inquiſition; and if they find the Rediſſeiſin, to Commit the Rediſſeiſor to the Goal till he be delivered by Ranſom. &c.

Poſt-diſſeiſin per Merton. 3. And the ſame Statute of Merton gives the Writ of Poſt-diſſeiſin after a Recovery in any Real Action by Verdict.

Stat. W. 2. c. 26. gives double damages. 4. But the Statute of W. 2. c. 26. gives double Damages in a Rediſſeiſin beſides the Fine and Impriſonment, and the Writ of Poſt-diſſeiſin after a Recovery in any Real Action by Default or Reddition, or any other way. Co. 2. Inſt. 416.

Difference between Rediſſeiſin and Poſt-diſſeiſin. 5. The difference between a Rediſſeiſin and Poſtdiſſeiſin is this, that the Rediſſeiſin is againſt him who was found Diſſeiſor before, but the Poſt-diſſeiſin is againſt him that was Tenant in the former Writ, in what Real Action ſoever. Co. 2 Inſt. 417. Vid. Raſt. Entr. 548. b. The Writ and Judgment in a Rediſſeiſin and Poſt-diſſeiſin.

What the Sheriff is to do. He may plead though the words of the Stat. do not warrant it. vid. Kelw. 125. b. 6. When the Sheriff has received the Writ that he has to warn the Rediſſeiſor, and who is complained againſt by the Writ to appear at the taking of the Inquiſition if he thinks fit, if he does not appear, the Inqueſt ſhall be taken by Default, if he do appear, he may plead in Abatement of the Writ, Joynt-tenancy or the like, or in Barr, as a Releaſe

Releaſe, 33 E. 3. Rediſ. 7. 40 Aſſ. 23. Co. 2 Inſt. 83. If he do appear and ſay nothing to the contrary by pleading, the Inqueſt ſhall be taken. Raſt. Entr. 549, a.

7. If the Inqueſt find the Rediſſeiſin or Poſtdiſſeiſin, the Judgment is Entred before the Sheriff thus, viz. Judgment.

Ideo conſideratum eſt quod præd. I. recuperet ſeiſinam ſuam verſus præd. A. de præd. Meſſ. &c. cum pertinen' & dam' ſū' occaſione Rediſſeiſin' præd. in duplu' per formam Stat. inde provis' qu' quidem dam' in duplo attingunt ad CC l. Et inde A. Capiatur & Priſon' Domini Regis ſalvo Cuſtod' ita quod a Priſona illa nullo modo deliberetur ſine Mandat' Domini Regis ſpecial', &c.

Note, the Jury gives the ſingle Damages, and the Court by the Judgment doubles it. Co. 2 Inſt. 416.

He is not to be diſcharged upon Bail or otherwiſe without the King's Writ, upon payment of a Fine by the Statute of Marl. c. 8. vid. Co. 2 Inſt. 114, 115. And this is the meaning of the Judgment.

Supple-

SUPPLEMENT
TO AN
ASSISE
OF
Novel Disseisin.

WHAT follows concerning an Assise was brought to my Hands by the Kindness of a Friend, and in regard it's very full and may be useful upon occasion, I have here added it as a further inlargement to the Chapter of Assise herein before mentioned, and for further Explication of the nature of an Assise and its Process.

What. 1. An Assise, what it is, Lit. 5. 234. 1 Inst. 103. Mirror, c. 2. 15. Bract. Lib. 4. c. 4. Fleta, Lib. 4. c. 5. Britton. c. 2. 44, 45.

In an Assise the Plaintiff shall recover his Land, Damages and Costs of Suit.

Festinum Remedium. It's called Festinum Remedium. 1. Because the Tenant shall not be Essoined. 2ly. Shall not cast a Protection. 3ly. Shall not pray in Aid of the King. 4ly. Shall not Vouch any Stranger, except he be present and will enter presently into the Warranty; so of Receit. 5ly. The Parol shall not demur for the Non-age of the Plaintiff or Defendant. 6ly. It is most beneficial; for in no Action at Common

mon Law a Man shall recover Damages, but in an Assise, Stat. Gloceſter c. 1. Co. 2 Inſt. Co. Lib. 8. 50.

For whom it lies.

It lies for him who is ſeis'd in Fee-ſimple, Tail, for Life, Tenant by Elegit per Stat. 13 E. 1. c. 18. by Statute Merchant, per Stat. 13 E. 1. de Mercatoribus; by Statute Staple, per Stat. 23 H. 8. c. 6. By a Reverſioner upon Ouſting his Termor. By the Lord upon Ouſting of his Copy-holder, by a Joynt-tenant upon the Ouſting of his Companion. By a Parſon of a Church, of a Common of Paſture per Stat. 13 E. 1. c. 20. Co. Lib. 8. 84. By Tenant by Recognisance in nature of a Statute Staple, per Stat. 23 H. 8. c. 6.

Againſt whom. Kell. 20. 2[illegible] Aſſ. 37. 46. Aſſ. 10.

It lies againſt the Tenant of the Freehold and the Diſſeſor who ought to be named in the Writ, otherwiſe it ſhall Abate, and ſo if it be of a Rent, the Tenant of the Land ſhall be named. and ſo of an Office, to be exerciſed in Lands, Houſes, &c. Fitz. Aſſ. 449. 4 E. 3. but it's ſufficient if one Tenant and one Diſſeiſor be named, 28 Aſſ. 37. 46 Aſſ. 10. But in an Aſſiſe of Rent Charge or Rent ſeck, all the Tenants of the Land ought to be named, Co. Lib. 6. 58. b. 32 Aſſ. 10. 31 Aſſ. 31. But in an Aſſiſe of Rent againſt the Meſne, the Ter-tenant need not be named, 31 Aſſ. 31. And although the Tenant Alien, hanging the Writ, yet, it is maintainable againſt him as Tenant. 9 Aſſ. 15. 12 Aſſ. 41. Or if the Diſſeiſor be Ouſted. But in an Aſſiſe of Tithes, the Ter-tenant needs not be named, and it lies againſt the Pernor where the Tenant hath Alienod, and he who makes the diſſeiſin may be adjudg'd Tenant. 24 E. 3. 31. & 63. But lies not againſt the Pernor except it be brought within the year after the Title accrew'd, or the Diſſeiſor himſelf, againſt whom the Aſſiſe lies during Life if Pernor the day of the Writ purchaced. 4 H. 4. c. 7. 4 H. 7. 24.

Dyer 84 a. 22 H. 6. 16. 1 H. 4. 4. 9 H. 6. 11. 12 H. 4. 2. Co. Lib. 1. 123 Co. Inſt. 445. Raſt. Entr. Aſſ. 1. Ric. 2. c. 9. 11 H. 6. 4.

Of What.

It lies of any thing, a Præcipe quod Reddat may be brought at Common Law, as of Common. 2 H. 4. 11. Of an Hoſpital, Chappel by the name of a Meſſuage, 13 Aſſ. 2. But by Statute of 32 H. 8. c. 7. it lies of a Patronage, Vicarage, Tithes, &c. and by Statute W. 2. c. 25. it lies of Profits apprender in a certain place * as of Eſtovers, de nucibus, glandibus & al' fructibus colligend' & capiendis in alieno ſolo, de Corrodio, Tolneto, Mercatu, Feria, Tronagio, Paſſagio

Raſt. Entr. Aſſ. Commun' Brownlowe's, Entr. 55. 1. p. 65, 66.

* Fitz. Aſſ. 445. F. N. B. 227.

* 30 Ass. 4. 22 H. 6. 9. 9 E. 4. 6. Dyer 7 Eliz. 114. 153.

Passagio & al' Officiis & Ballivis in feodo * ou pur Vie, and it lay at Common Law of an Office, although Removeable. 7 E. 3. 63. 8 E. 3. 55, 56, 10 E. 3. 27. b. Fitz. View 77. 27 H. 8. 12. 7 H. 6. 8. 7 Ass. 12. 10 Ass. 11. although removeable, 2 E. 4. 2. It lies of Turbary, Piscary and other Commons whether appendant or in gross, which lay not at Common Law, because no Writ in the Register. 8 Co. 48. Of an Office of Packing Wool. 21 H. 6. 10. Of Clerk of the Crown. 9 E. 4. 6. Of Serjeanty of the Bank, of the Keeper of the Forest, of the Bailywick of the Forest, of the of the Exchequer, Fitz. Ass. 7. 7 Ass. 12. Of a Boyling of Salt in a certain place in other Lands. 9 Ass. 12. Of the Office of Register of the Court of Admiralty, Dyer 103. Of Precedency of a Colledge, Dyer 203. Of the Mastership of an Hospital and a Lay Fee. 11 Co. 99. b. Of the Office of Filazer, Dyer 114. b. * Of the Office of Herald. But it lies not of an Office without Profit. And if the Plaintiff be disseis'd of the Profit of his Office or any part thereof, he may have his Assise thereof and not of the Office it self. 21 H. 6. 10. and it may be of part of an Office, as the fourth part of the Office of Serjeanty of the Bank. 7 Ass. 12. Fitz. Ass. 7. So of a Corody. 22 H. 6. 9. 12 Ass. 23. * It lies against the Lord for distraining his Tenant so often that he cannot manure his Land. F. N. B. 78. or 178. 9 H. 7. 3. 27 Ass. 51. but it lies not against a Stranger because the Tenant may make Rescous, 27 Ass. 51. It lies not for distraining for Homage, Fealty, or Suit, 27 Ass. 50. and it lies though the Plaintiff continue Possession. 21 Ass. 51. 28 Ass. 50. Contr. Kell. 20. So per Stat. W. 2. c. 25. * It lies where any depasture in my several Pasture. F. N. B. 178. 27 Ass. 30. 8. Co. 45. And for Fishing in my several Piscary. F. N. B. 178. 27 Ass. 30. Fitz. Ass. 438. Of the Vestur' or prima tonsur' prati, Dyer 71, Of Tithes or a certain portion of Tithes, Dyer 83. and many things may be joyned together in an Assise, as Common of Estovers and Turbary, or of Land and a Corody, or of a Rent Service and a Rent Charge or Seck. 7 Ass. 18. 11 Ass. 22. Of the Office of a Constableship of a Castle, Keeper of a Park and Goal and Forrestership, Rast. Entr. Assise in Office.

Fitz. grant 104 Bract. Lib. 4. c. 2. 231. Fitz. Ass. 417. 138.

* Brownlow. 68.

* Rast. Entr. as in sovent distress.

* Rast. Entr. Ass. in Com. 2.

It

Of what it lies not.

It lies not of a Rent out of Land in several Counties. 10 Ass. 4. 18 Ass. 10 Nor of Rent out of Rent. 3. H. 6. 20. Nor of an Annuity or Pension, 24 H. 6. 12. Nor of an Hospital or Chappel but by the name of a Messuage. 23. Ass. 2. nor of a Passage over the Water, nor of a Way, Fitz. Ass. 440. Nor of the Profit of a Fair. Br. Ass. 471. Fitz. Ass. 388. 407. Nor for not doing Service. Kell. 130. Nor of Offices without Profit; nor of any Easement. 30 Ass. 4. 8 E. 4. 22. 19 H. 8. 11.

Where it shall be brought.

It shall be brought in the County where the Land lies; but where a Manor extends into several Counties, or if it is of Common in one County appendant to Land in another and the Counties are next adjoyning, the Writ shall be brought in Comitiis Comitat': See of Offices to be executed in two Counties, it needs not in such Cases that the Counties be adjacent. 21 H. 6. 9, 10. 10 E. 3. 18. Kell. 98. a. 7. Co. 3. But by the Common Law one cannot have an Assise in Comitiis Comitat' of a Rent issuing out of Land in two Counties; but now by the Statute 7 R. 2. c. 10. one may although Ten Counties intervene, and there shall be several Originals and one Patent, 5 E. 4. 2. F. N. B. 100. If Rent be granted out of Land in one County and Distress granted in another, it shall be brought where the Rent is issuing, and not where the Distress is to be taken. 10 Ass. 4. 3 Ass. 7.

In what Court and before whom.

It may be brought in the one Bench or in the other, if the Land lies in the County where they sit, at the election of the Party. F. N. B. 177. b 437. 9 Ass. 7. 10 Ass. 17. But if one Bench be there only, then in that, Reg. 196. but if neither the one nor the other, then before the Justices in Eire without a Commission, Reg. 197. a. Br. Ass. 496. or before the Justices of Assise of the same County by their general Commission, but then the Original ought to bear date before the Patent; or before some other by special Commission, to whom some others may be associated, but then there ought to be a Writ of Si non omnes, otherwise they all ought to be present, and one may be associated in the place of the Principal Judges of Assise. 28 Ass. 2. But if the Plaintiff be made one of the Justices, the Assise cannot proceed, 45 Ass. 3. If the King make several Writs of Association, the last is void, but if all

12 H. 4. 19. Fitz. Ass. 116. Br. 414.

be made at one and the same time, that which the Justices accept first shall be only good. 27 H. 6. 11. And if the Patrol be put without any petition Vouch of the Justices, yet the Patent of Simon Imes shall stay for the whole Plea. 34 Ass. 15. and if there be new Justices at the day of Adjournment, they may proceed, Fitz. Ass. 100. And though there be a new Commission, and Proclamation have been made, yet the old Justices may proceed till notice, 21 H. 6. 26. And if it be brought in the Common Pleas or King's Bench which is removed, it shall proceed there and be tried, 11 E. 3. 23. 3 H. 4. 4. And if it be there revers'd for Error, it may proceed there to Outlawry and Attachment de novo, 21 Ass. 22. And if one and the same Person have several Assises in one County, he may have one special Patent for them all, Reg. 196. See special Patent, Rast. Entr. Ass. Special per 1 E. 6. c. 7. Its Enacted that a new Commission shall not discontinue an Assise.

The Form of the Writ of Assise. 1. Form. Dyer 84.

At Common Law there are only Two Forms of Writs. One De libero Tenemento in ceste Forme, viz. ~~Rex Vic'~~ L. salutem, Questus est nobis, &c. vid. ante.

Mes si security soit trove in Cancellar' donq' ferr'. Et quia præd' A. fecit nos secur' de clamore suo prosequen' per B. de Com' tuo tibi præcipim', &c. Si coram special' Justic' donq' ferr' usque certum diem qu' dilect' & fideles nostri R. & I. tibi Scire fecer' & interim, &c. Si soit returne in B. ou B. le roy donq' ferr' incert le jour del returne solemt', Plowd. 415.

If it be returnable in the Common Pleas or King's Bench, it may be returned at a day out of Term per Stat. Artic' Cart. c. 15. 27 H. 6. 2. The Writ wanted (tunc) sit, &c. adjudged ill and Plowd. 414. the Writ was returned Cor' præfat' Justic' where none were named before, and ill.

In this Form is the Writ, though it be of an Office or any profit apprender, so if it be by Tenant per Stat. Elegit, &c. and the Plaint shall be special. Dyer 84. 8 Co. 50. b. 27 Ass. 30. F. N. B. 178.

The

The other Form of the Writ is ——— Rex, Vic' ſalutem, &c. Queſtus eſt nobis, &c. diſſeiſivit eum de Communia paſtur' ſu' in N. (pertinet ad liberum Tenementum ſuum in eadem Vill' vel alia) infra, &c. & ideo, &c. de dam', &c. & nomina eorum imbreviari & ſum', &c. quod ſint coram Juſtic' noſtris apud E. vel coram nobis apud W. die Jovis prox' poſt Octabis Sancti Michael' prox' futur' vel coram Juſtic' noſtris ad prim' Aſſiſam cum in partes ill' vener' vel coram dilectis & fidelibus noſtris R. & I. & eis qu' ſibi aſſocian' ad cert' diem & locum tibi Scire fac', &c.

Si ſoit de Commune in gros precatur hoc. Reg. 197.

Si coram general Juſtices de Aſſiſe. Si coram ſpec. Juſtices.

And in like manner are Writs of Common of Turbary, Piſcary and the like, Reg. 197. But if it be in Confin' Com' then the Writ ſhall be ſuch, diſſeiſ' eum de Commun' paſtur' in N. qu' pertinet ad liberum Tenementum ſuum in R. qu' ſunt in Confin' Com' tui & Com' L. infra, &c.

In Confinio Com.

And although the Form is to be ſtrictly obſerv'd as before; yet 8 Aſs. 24. Bois or Wood was put before Paſture, and adjudg'd good, 8 Aſs. 1. Toft before a Milne, and no Exception.

And the Plaintiff ought to find Surety to proſecute either before the Sheriff or in Chancery. 2 H. 4. 20.

Pleg. de proſequend.

And if the Sheriff return that he hath not found Pledges, he may do it preſently in Court, and the Form of the Return of theſe Writs is ſuch ——— Pleg' de proſequendo I. V. R. B. infra nominat' W. & nihil habent nec eorum alter aliquid habet in Balliva mea per quod poſſint ſeu eorum alter poteſt Attachiari, nec habent Ballivum nec Ballivos, nec ſunt invent' nec eorum alter invent' eſt in Balliva mea Reſid' executionis iſtius bris' patet in quodam Panello huic bri' annexat', But if Attachment be made, then the Return is, ——— Infranominat' W. & I. attachiat' ſunt per un bovem pretii 5 Solid' Reſid', &c. I. B. ar' Vic'. Plowd. 73. 415.

Return del brief viz. Nihil nec eſt invent.

Return, Attachment.

Infra nominat' W. & I. Attachiat' ſunt per Pleg' I. V. R. R. allowed for a good Return, yet where the Writ was returned per Pleg' infranominat' W. & I. was diſallowed by the better opinion. 5 E. 4. 10. or 109. b.

Attachment per Pledges

Attachment per Baily. I. B. Ballivus infranominat' W. & I. attachiat' per pleg', &c. & nihil habet. 28 Aſſ. 40. 26 Aſſ. 33.

The Pannel. Nomina Recognitor' Aſſiſæ novæ diſſeiſinæ inter A. quer' & W. & I. def' de Tenement' in S. ſum' Jurat' I. V. I. R. Manucapt' Jurat' I. B. R. cum W. Py. & H. Fry. I. B. ar' Vic' ſum' Jurat' præd. I. H. & R. S. Manucapt' ſum' Jurat' pd', & eorum cujuſlibet.

Abatement del briefe nemy favour. Exceptions to the Writ are not favoured Pl. Com. 96. a. Miſnoſmer of the Defendant ſhall not abate the Writ if another Diſſeiſor and Tenant be named, or if Joynt-tenancy as to part be Confeſſed, it ſhall abate only as to that part; for if there be a Diſſeiſor and Tenant to any part, it is ſufficient: So if one of the Tenants be dead, or nul tiel in rerum natura, it ſhall not abate if there be a Diſſeiſor and Tenant. 10 Co. 64. b. 43 E. 3. 18. ſo Entry into one Acre ſhall not abate the whole Writ. 21 E. 3. 34.

14 Aſſ. 8. 19 Aſſ 14. 3 Co. 1.

12 Aſſ. 14. 23 Aſſ. 10. 63. 29 Aſſ. 62.

What Pleas are good in abatement of the Writ. Yet the Writ ſhall abate for variance between it and the Patent. 22 Aſſ. 20. And in an Aſſiſe of Rent out of the Manor of D. in D. it's a good Plea that the Manor extends into D. and S. Bro. Aſſ. 84. It's a good Plea in abatement that the Sheriff is named Defendant of Corn, and that he is neither Diſſeiſor or Tenant per Stat. 11 H. 6. c. 2. So that Maiors and Lords in antient Demeſne are named Tenants, to out there their Jurisdiction, per Stat. 9 H. 4. c. 5. But a Diſſeiſor ſhall not plead to the Writ an Entry ſince the laſt continuance contra 37 H. 6. 2. nor that the Plaintiff was ſeis'd the day of the Writ purchaſed, 26 Aſſ. 49. a. * nor Joynt-tenancy, 12 Aſſ. 37. which are good Pleas for the Tenant, for he may plead nul tenant del franktenement noſme, Raſt. Entr. Aſſ. Barr. 4. and that the Plaintiff was never ſeis'd. And the Tenant may plead ſeveral Pleas to the Writ and over in Barr. or to the Aſſiſe, and the Tenant may plead there's no Diſſeiſor named, That the Land is in another Town, 30 H. 6. 1. or that he has nothing but joyntly with his Wife not named, 44 E. 3. 8. but none ſhall plead Miſnoſmer but the Party himſelf, 30 Aſſ. 2. Two Dales and none without addition is no Plea. 29 Aſſ. 59. Bro. Aſſ. 304. 471. Fitz. Briefe 417. If the Verdict find there's no Diſſeiſor named, the Writ ſhall abate.

Quenx per Diſſeiſor.

Quenx per Tenant

Raſt. Entr. Aſſ. Barr. 3. R. Entr. Barr. 3.

Abatement per Verdict.

26 Aſſ. 35. 46 Aſſ. 10. 34 Aſſ. 3. Or if the Aſſiſe find one is Joynt-tenant with a Stranger not named, Fitz. Aſſ. 457. Contr. 33 H. 6. 30. or the Plaintiff that Sues in right of his Prebendary and be not ſo named. Fitz. Brief. 675. A Writ of Forcible Entry pending, is a good Plea in abatement. Raſt. Entr. Aſſ. in Barr. 3.

If it be brought againſt Husband and Wife, and the Husband dies, it ſhall abate againſt the Wife, but ſhall ſtand againſt others, if there be a Diſſeiſor and Tenant, 27 Aſſ. 45. but if the Husband was the ſole Diſſeiſor, it ſhall abate againſt all, 28 Aſſ. 37. Fitz. Brief. 883. Br. Aſſ. 474. If it be brought againſt Joynt-tenants, and one dies, it ſhall abate againſt all; ſo if one Diſſeiſor dies and another is named Tenant, but if the Tenant Inſeoff one of the Diſſeiſors and dies hanging the Writ, the Writ ſhall not abate, 27 Aſs. 47. But if any of the Defendants were dead the day of the Writ purchaſed, the Writ ſhall ſtand if there be a Diſſeiſor and Tenant. 26 Aſs. 63. 29 Aſs. 70. Per mort.

In Aſſiſe of Rent Diſtreis pending, the Writ ſhall abate it, 29 Aſs 52. If the Plaintiff make an inſufficient Title in his Plaint, yet it ſhall not abate the Writ. Plowd. 84. Entry hanging the Writ ſhall abate it, but it muſt be a treſpaſſable act and declared to no other intent. Plowd. 93. Inſt. 245. But if it be a Way, or by invitation which may excuſe a Treſpaſs, it ſhall not amount to an Entry. 4 E. 4. 60. Or with another intent, as with the Recognitors to View. Pl. 92. Or to Prohibit Waſt, or to make claim to prevent a deſcent. Lit. Continual Claim. Or if the Lord who hath an Aſſiſe of the Office of Keepership hanging, Enter and kill a Deer. 8 Jac. B. R. Brownlow's Rep. 229. Eſcape of Beaſts into a Common ſhall not abate an Aſſiſe of it. In an Aſſiſe of Rent the Tenant may plead that all the Tenants of the Land are not named, and good, but a Perſon, &c. ſhall not plead it. Fitz. Aſs. 11. 22 H. 6. 23. Matter matters q' abater' le briefe.

If the Defendant plead in abatement and over to the Aſſiſe, the Plea to the Writ ſhall be firſt inquired, and if it be found, the Writ ſhall abate. 44 E. 3. 33. 8 Aſs. 1. 44 E. 3. 23. If Joynt-tenancy be pleaded to part, the Plaintiff may Confeſs it, and pray the Aſſiſe as to the reſidue. 19 Aſs. 14. If the Tenant plead to the Writ and over to the Plea in abatement and over al Aſſiſe.

Queux serra prius inquir'.

the Assise, the Plaintiff shall not reply to the Plea to the Writ, but it shall be first inquired, Pl. 91. Neither can be demurr to such Plea, ibidem. 23 Ass. 10. 26 Ass. 63. Fitz. Ass. 168. & Bre. 432. And there adjudg'd that it is not Peremptory but a Respondes ouster. 6 E. 3. 31. If one plead to the Writ, and do not conclude to the Writ, it shall be taken as a Barr. 23 Ass. 9. 9. Ass. 23. Br. Ass. 117.

Summons and Severance.

Summons and Severance lies in this Action. 10 H. 6. 22. and so for Joynt-tenants, 23 Ass. 9. Rast. Entr. Ass. in Summons, &c. Essoin lies not in this Action but upon a Re-attachment it lies. Rast. Entr. Reat. in Ass. 3: 44 E. 3. 5. 44 Ass. 24. 2 Inst. 249. But the Plaintiff may be Essoin'd, and it shall be entred upon the Record of the Assise, and not upon the Essoin Roll. 30 H. 6. 1. 45 Ass. 2. It lies also for the Plaintiff upon a Summons ad sequend' simul, but the 10 H. 6. 22. Contr. that such Essoin was quash'd for good Cause, and 22 Ass. 79. It's said that in the King's Bench they will not admit the Plaintiff to be Essoin'd in any Assise. 2 Inst. 249. And note that W. 1. c. 42. is not intended of Writs of Novel disseisin.

Essoin.

The Form of the Plaint in Assise.

For the Form of the Plaint in Assise, Vid. antea. f.

But if it be of an Office thus,——Assisa ven' recognitur' si I. Epus' M. & T. D. injuste disseisiv' E. P. Arm' de libero Tenemento suo in L. &c. Et unde idem E. P. in propria sua persona quer' quod disseisiv' eum de Officio Constabular' sive Custod' Castr' de L. ac de xij d. eidem Officio pertinen' singul' hebdomat' apud L. præd. de exitibus & proficuis Castr' præd. sive dominii de L. provenien' per manus receptor' ejusdem Castr' sive dominii de L. pro tempore existen' ibidem precipiend'. Ac de Officio Custod' parci, &c. Vid. Rast. Entr. pro resid' 74. b. Tit. Assise. Et vid. 75. a. Et vid. Co. Entr. Tit. Assise. pl. 1.

Where a Title ought to be shewn in the Plaint.

But it seems he ought to shew in what he received the Profits of the Office, as in the Case of Brownlow, 12 Jac. B. R. for the Supersedeas of an Office, and Dyer 14 or 146. But it seems he need not shew the Year and Day of the disseisin, 20 Ass. 16. And in Assises of Common, Offices, and all things that are against Common Right, the Plaintiff ought to make a Title in his Plaint. 15 Ass. 15. 35 H. 6. 6

and

and 7c. So in Assise of Tithes, Dyer 83. So of all Profits appender, 34 Ass. 11. But in an Assise for Rent he needs not make a Title, for it shall be intended prima facie, a Rent-service. But in an Assise of Rent-charge or Rent-seck, it's the safest to make a Title, and for this see Vaughan Sprott, 6 Co. 56. b. Executors ought to make a Title in their Plaint, 28 Ass. 7. But where the Plaintiff makes a Title in his Plaint, it is not peremptory, for if he have any other good Title, it is sufficient. 30 Ass. 5. But in an Assise of Will the Writ and Count shall be general, Co. 4. Lib. 87. a. And in an Assise of Sovent distress, & in Casu quo quis, &c. the Writ shall be general, unto the Count special. 8 Co. 50. a. And though an Assise lies not for an unprofitable Office, yet in the Plaint there needs not to shew the Profit. 5 E. 4. 2. 22 H. 6. 9. 9 E. 4. 6. 8 H. 4. 30 Ass. 4. 27 H. 8. 12. 35 Ass. 5. A good Writ may abate by reason of an ill Title where it need to have been shewn, Plow. 84. The Plaint for a Rent-service shall be cum pertinen' Rent nemy, 13 Ass. 4. & 41. But Tenant by Statute, by Elegit, &c. need not shew any Title in his Plaint. 22 Ass. 41. And note that in an Assise of a new Office he needs not shew that the Profits belonging to it is granted, Co. Lib. 8. 49. b.

A Disseisor may plead all Pleas which go in discharge of Damages, but not in extinguishment of the Right, as a Release of Actions personal, 1 H. 5. 4. He may plead ne Tenant of the Freehold, or another Action pending of an higher nature, or the Plaintiff hath nothing but joyntly with I. S. not named, 12 Ass. 37. Or Entry into part of the Land, hanging the Writ. 35 H. 6. 13. But he shall plead nothing to the Writ which toucheth the Tenancy, 45 E. 3. 37 H. 6. 2. But he shall not plead an Entry since the last Continuance, 37 H. 6. 2. But 8 Ass. 2. it's doubted whether a Disseisor may plead to the Writ, Quod mirum. He may plead Auterfoits acquit, 11 Ass. 9. He may have many Pleas at once, as Misnosmer, Et si, &c. nul tenent', &c. Et si, &c. Ne unque seise, &c. Et si nul tort, &c. 22 Ass. 14. But quær. for it seems he cannot plead Misnosmer, Fitz. Ass. 120. He cannot plead that the Plaintiff was seis'd the day of the Writ, &c. 26 Ass. 49. 27 Ass. 30. Contr. 28 Ass. 41. Or that the Plaintiff never had any thing, 27 Ass. 65. Nor that the Lands are in another Will. 30 H. 6. 1. Nor that there

Queux pleas disseisor plead.

are

Rast. Entr. in fresh force. Brownlow's Entr. 63.

are many Wills in one Hundred not named, 30 Ass. 5. He shall not plead a Recovery or matter of Record without shewing it presently, Fitz. Ass. 120. Nor no Disseisor nam'd, 16 Ass. 10. That one of the Ter-tenants nam'd was dead the day of the Writ purchas'd, 29 Ass. 70. The Tenant may, but he shall not plead Hors de son fee, 14 Ass 13. Nor can he plead Joyntenancy, 12 Ass. 37. He may plead ancient Demesne, Co. Lib. 5. 105. It seems he may plead Misnosmer or Coverture of the Plaintiff, Fitz. Ass. 120, or 220.

Queux Pleas un Baily avera.

Kell. 117. b. 8 Ass. 2. 12 Ass. 4.

Baily may plead a Feoffment of a Stranger whose Estate his Master hath, and so in without tort, or that his Master recovered the Land from the Plaintiff, and so, &c. or that the Land was assign'd to his Mistress for her Dower, or given to his Master in Exchange, and so in &c. And so he may plead all Pleas that excuse his Master of a tort, but not to the Writ, and yet he may plead Misnosmer of his Master, Rast. Entr. in Assise Body-politick. 1 Contr. 22 H. 6. 44. He may plead Dilatories and over to the Assise, as that the Land is in another Vill, Et si nul tort, &c. Rast. Entr. He may plead no Tenant, Et si nul tort, &c. Rast. Entr. Barr Bre' 14. 4. And he may plead Nul Vill, Et si, &c. donq' nul Tenant, Et si, &c. That the Plaintiff was never seis'd &c. Rast. Entr. Ass. in Reattach. 1. But he cannot plead another Writ pending, 8 E. 3. 2. He may have all, 26 Ass. 1. Fitz. Ass. 140. And he may say the Lands are in another Town, but cannot disclaim, 26 H. 6. 44. He shall not plead Dilatories and rely upon them, but over to the Assise, and therefore he shall not plead Joynt-tenancy by Deed or ancient Demesne, because it is not triable by the Assise: But he shall not plead a Release to his Master by the Plaintiff himself, nor a Feoffment with Warranty, Kell. 117. He may plead all Pleas triable by the Assise, per Hussey. 6 H. 7. 11. & 9. 9 Ass. 4. He may plead Hors de son fee. 2 E. 3. 8. He cannot plead any matter of Record to the Writ or in Barr, nor any Plea out of the Point of the Assise and not by it triable, nor any Plea which he cannot Conclude Et si trove ne soit nul tort, &c. 1 Ass. 11. 2 Ass. 4. 8 E. 3. 1. 2. 19 E. 3. 13. 16. 9 Ass. 4. 25 Ass. 26. 8 H. 6. 9. 21 H. 6. 58. 22 H. 6. 44. 1 E. 4. 4. 8 H. 7. 24. 11 H. 7. 11. F. N. B. 182. He shall not plead Hors de son fee by some Opinions, but Contr' tenetur, 2 Ass. 4. He cannot Confess the Action, 22 Ass. 35.

Kell. 117. b. Rast. Entr. Assise in Fresh force. 2.

W. 2. c. 25.

2 Inst. 414. b.

The

The Defendant after Plea by the Baily may plead in Perſon all Pleas whereof a Certificate of Aſſiſe lies, as a Releaſe, 20 Aſſ. 6. 50 E. 3. 9. But after Plea to the Aſſiſe by Baily he cannot plead in Barr, 48 E. 3. 7. But after remanding of the Aſſiſe in Right of Damages, he may plead a Releaſe, Recovery, or any other matter whereof a Certificate lies, 23 Aſſ. 33. But he ſhall not be admitted to ſuch a Plea after the Jurors are Sworn or the Aſſiſe awarded, 29 Aſſ. 18. But by 11 Aſſ. 9. The Tenant after the Aſſiſe awarded may plead.

Queux pleas le party avera in perſon, apres plea per Baily.

3 Aſſ. 11.

The Tenant upon a Re-attachment may plead De novo, if he will, 44 E. 3. 23. But he ſhall not plead to the Writ after he has pleaded in Barr, but he may wave his Barr, and plead to the Aſſiſe, 17 Aſſ. 17. 32 Aſſ. 2. He may plead Nul tiel in rerum natura, as one of the Plaintiffs, Et ſi, &c. Nul tort. 44 E. 3. 26. 50. He may plead Baſtardy, but after an adjournment upon it he ſhall not be admitted to plead a Releaſe, &c. 23 Aſſ. 5. One ſhall not plead Hors de ſon fee, Miſnoſmer, Et ſi, &c. Nul tort, 3 E. 3. 15. One may plead that ſûr, ſo nient noſme, Et ſi, &c. Nul tort 29 Aſſ. 70. If he plead that the Land is in another Vill, he ſhall not plead over Nul Tenant, &c. 30 H. 6. 1. Nor that the Plaintiff had any thing but joyntly with I. S. not named, 30 Aſſ. 2. An Infant pleaded a Plea which was adjourn'd for difficulty, and he was admitted to plead again, and it was remanded, 44 E. 3. 10. 12 H. 4. 19. 20. If he plead Joynt-tenancy by Deed, he ſhall re-plead over, 23 Aſſ. 10. Pl. 91.

What Pleas ſhall be had after others.

3 Aſſ. p. 9.

Raſt. Entr. in Aſſ. in Rent. 1.

The Tenant may plead ancient Demeſne, 21 H. 6. 57. He cannot plead Non-tenure, or that he hath nothing, nor no Tenant of the Freehold named, 8 Aſſ. 14. He may plead Joynt-tenancy, Co-parcenary or Tenancy in Common, and the Plaintiff is Tenant at will to the Defendant, 29 Aſſ. 22. None can plead Miſnoſmer but the Party himſelf, 29 Aſſ. 70. None can plead in Barr without taking the Tenancy upon him, 37 H. 6. 23, 24. Auter Aſſiſe pending, 14 Aſſ. 7. Raſt. Entr. Aſſiſe in Barr, 4. Nul poet plede Miſnoſmer del Vill, but the Tenant, and although one plead to the Aſſiſe, another may plead Joynt-tenancy with him, 14 Aſſ. 16. Quod permittat pendant is a good Plea in an Aſſiſe of Common, 15

What Pleas the Tenant ſhall have.

Raſt. Entr. Aſſ. antient Demeſne. 1. 2.

Brownl. Entr. 57.

Raſt. Entr. Aſſiſe 4.

Ass. 43. If the Tenant plead in Barr to one Plaintiff and to the Assise to another, it's a waver to the Barr, 30 Ass. 7. If the Tenant plead Nul tenant, it is to the Assise, 30 H. 6. 61. That one of the Tenants is dead the day of the Writ purchased is ill, if there be another Disseisor and Tenant 29 Ass. 70. Fitz. Ass. 116. Br. 415. The Tenant may plead in Barr, and pray that the Age of the Plaintiff may be view'd, but he cannot plead generally that he is of full Age. If one plead a Foreign Plea and pray that it may be inquired by the Assise, and does not say per Patriam, it shall be tried by the Assise and not adjourn'd, 14 H. 4. 10. No Tenant nam'd is to the Assise, 30 H. 6. 1. Joynt-tenancy by Deed, Rast. Entr. as in Barr. 3. Br. 7. In Assise of Rent he may plead Nul pernor, Et dehors de son fee, & nul pernor and Tenant, in another Will, Et null tort, Rast. Entr. 1. 18 H. 8. 3. b. To plead a Feoffment with Warranty is double without relying upon the Warranty, 14 H. 8. 24. per Brudnel. And note that if an Assise be brought against a Tertenant by a false Name, he may appear and plead, 24 H. 8. 1. per Bromley.

What matters shall be in Barr.

The Deed of the Ancestour with Warranty is a good Barr, 44 E. 3. 5. 8 H. 4. 7. So of a Descent without a continual Claim, 44 E. 2. 1. but not if it be hanging the Writ, 1 H. 6. 1. So a former Recovery in a Writ of Assise is a good Barr, 44 E. 3. 4. 23 Ass. 16. That the Plaintiff ousted him and he presently re-entred, 45 E. 3. 24. That the Plaintiff was not seis'd within 30 Years is a good barr, 13 H. 4. 17. But the Feoffment of the Plaintiff himself is no good Barr, because it amounts to the general Issue; but his Feoffment to I. S. whose Estate the Tenant hath is good without Colour, 15 E. 4. 31. But by some Books it is not good without a Warranty and relying upon it, 29 Ass. 4. 6 H. 7. 14. nor by the Feoffee, 30 Ass. 40. Coparcenary and that the Plaintiff is seis'd as his Tenant at will, is good. 11 Ass. 29. Or to say that he is seis'd at will, 12 Ass. 1. So of Tenancy in Common, 22 Ass. 29. 29 Ass. 22. So of Joynt-tenancy Another Assise pending is a good Plea, 12 Ass. 1. but not before the Plaintiff's Deed; Arbitrament seems to be a good Barr, 12 Ass. 20. Outlawry in trespass pleaded in Barr, 13 Ass. 5. Another Action of a more high nature depending is good, 29 Ass. 40. A Lease or Feoffment of the Plaintiff himself is no good Plea, because it amounts

Rast. Entr. as Barr. 1. 1 Brownl. Entr. 58.

amounts to the general Issue nul tort. 38 Ass. 26. A Lease for Life or Years the Reversion to the Plaintiff, a Feoffment of the Plaintiff with Warranty and relying upon it, is good, 18 E. 4. 10. 21 E. 4. 65. Release of one of the Plaintiff's is only a Barr to a moity, 18 E. 4. 14. Fitz. Barr. 39. 59. Recovery of the Land in another Writ in the same County is good, 24 E. 3. 45. 1 Ass. 17. Recovery in a Forcible Entry is a good Barr, 11 H. 7. 15. If one of the Defendants plead to the Assise, the other may plead Joynt-tenancy with him, 14 Ass. 6. That the Plaintiff is an Alien is good, 22 Ass. 25. If the Plaintiff makes a Title in his Plaint, it's not sufficient for the Defendant to avoid it, but must make to himself a Title, 36 H. 6. 33.

If the Tenant plead specially in Barr, he may after waive it at his pleasure and plead the general Issue though it be Entred, 34 H. 6. 29. 44 Ass. 1. or where the Jury is ready to pass ibidem, or at another day when it remains pro defectu Jurator' fuit agard, 34 H. 6. 10. And it is to be noted, that in all Cases when the Defendant pleads any special Title by a Stranger which binds not the Party in his Blood, he shall not give Colour, as where the Defendant relies upon a Warranty, Estoppel, Fine, Recovery or Act of Parliament, 3 E. 4. 2. Fitz. Trespass 160. 22 E. 4. 4. 5 H. 7. 10. But if he pleads matter which only binds the Possession and not the Right, as a Descent, no Colour needs to be given, 19 H. 6. 41. 22 H. 6. But if the Defendant makes Title to himself by the Plaintiff, he needs not give Colour, as by a Lease for Years, 15 E. 4. 31. Or by a Lease for Life, 6 H. 7. 14. So when the Defendant pleads to the Writ, or the Action of the Writ no Colour needs, 21 E. 4. 4. And if one justifies as Servant to a Stranger by special Title, he shall give Colour, otherwise upon a general Title, as if he says that such a one was seis'd in Fee, and as Servant, &c. But if he says he was seis'd in Fee, and Infeoff'd I. and that he as Servant, &c. he shall give Colour, 2 R. 3. 8. 1 H. 7. 19. But if one plead a general Barr, as that the place is the Freehold of I. S. &c. or the Tenant Defend himself, &c. he shall not give any Colour. Every good Colour is to have Four qualities. 1. It ought to be a doubtful matter to the Lay people, 19 H. 6. 21. 11 H. 4. 3. 19. E. 4. 3. 23 H. 6. 54. 10 H. 6. 8. 36 H. 6. 7. 20 H. 6. 27. 2ly. Every Colour ought to have

1 Ass. 17. Br. Ass. 111.

Where the Defendant shall give Colour. 2 R. 3. 8. 1 H. 7. 19 R. Entr. Hill. Ass. Barr. 1. 3. Brownl. Entre. 59. Rast. Entr. Ass. Barr. 1. 2. 4 Co. 10. 90 R. Entr. Corps Polit.

Qualities of good Colour.

Continuance and not to be of any Estate determin'd, or by one whose Estate is determin'd, 2 E. 4. 19. 3ly. It ought to maintain the nature of the Action as Tenant in the Assise, not as Guardian, 32 H. 6. 6. nor to the Ancestours when the Action is of one Possession. 4ly. It ought to be by the first in the Conveiance of the Title, otherwise all is waved, 10 H. 7. 14. And note that Colour shall not be given where Tithes are in demand. Co. Lib. 10. 91. a. And in Assise of Common, approvement is a good Barr without Colour, Fitz. Ass. 137. 7 E. 3. 67. So if the Tenant plead a Lease for Years of a Stranger, its a good excuse without Colour, Dyer 246. And it seems there needs no Colour where the Defendant by his Plea admits that the Plaintiff had such an Estate which is defeated by Condition, Entry, &c. 5 H. 7. 29. per Bryan.

Rast. Entr. Ass. Release with Colour in Barr.

Replication and matter concerning it.

Title at large.

And note that in all Cases where the Defendant shall give Colour in his Plea, there the Plaintiff may make his Title at large; but where the Barr is not at large, but the Defendant gives the Plaintiff Title and destroys it as a Feoffment upon Condition, &c. there the Plaintiff cannot make his Title at large, 5 H. 7. 32. b. And it seems by some, That if the Tenant makes his Title by Fine, Feoffment with Warranty or Act of Parliament, that a dying seis'd is no good Title for the Plaintiff against it, without shewing how the Ancestour of the Plaintiff regain'd the Possession of the Land, 5 H. 7. 32. Fitz. Title. 8. 10 Ass. 23. 5 H. 7. 29. But if a Feoffment with Warranty be pleaded, a dying seiz'd is a good Title, as it is agreed, 18 Ass. 18. Fitz. Title. 9. So if the Tenant plead a Recovery against a Stranger, Descent is a good Title, 10 H. 4. 9. Some other Books agree that a Descent is no good Barr against a Fine, Recovery or Act of Parliament, but admitted against a Feoffment with Warranty, 17 Ass. 18. 29 Ass. 25. 9 E. 3. Fitz. Ass. 1. Br. Title. 55. But other Books make a difference, a Fine or Recovery, Executory, and executed against the last, they admit a Descent a good Title, but not against a Fine, &c. Executory, 28 Ass. 17. 10 Ass. 22. 33 E. 3. Fitz. Title. 4. But a Descent is a good Barr against a Feoffment and Warranty of a Stranger, and with this agrees 28 H. 6. 5. Fitz. Title 19. If the Tenant give Colour to the Plaintiff, he may make his Title at large, Rast. Entr. Ass. Barr. 2. Replic' 1. 2. Where the Barr is travers'd, as to say, that before

18 E. 3. 21 Fitz. Title 30, 31.

before the Tenant had any thing he was seis'd and disseis'd and traverse the matter of the Barr, Fitz. Ass. 15, 16. If the Tenant give to the Plaintiff a Possession and no Colour, then may the Plaintiff traverse the Barr without a Title, but if he give to him Colour and no Possession, the Plaintiff ought to make a Title, 19 H. 6. 20 H. 6. 22 H. 6. 1. 26 H. 6. Fitz. Title 18. And then it is not good to say that he was seis'd and disseis'd, and so traverse the Barr without Conveying to himself the Possession by Feoffment, &c. In Assise of Rent its a good Title by Prescription in him and all his Ancestours whose Heir he is, 18 Ass. 17. Or to him and his Predecessors, Fitz. Title 34. 18 E. 3. But not that he and all those whose Estate he hath, 31 Ass. 23. Fitz. Title 13. but 23 Ass. 6. seems Contr. and a dying seis'd of Rent is no good Title to it, 10 H. 7. 23. Contr. 30 Ass. 33. If Joynt-tenancy by Deed be pleaded, he shall reply sole seis'd the day of the Writ purchased, 15 Ass. 13. If it be without Deed, the like Replication, but no Process upon the Statute, Fitz. Ass. 16. Br. 290. If a Record be pleaded, see what shall be the Conclusion, 11 Ass. 2. If a Record be pleaded, the Plaintiff shall reply habeas Record' hic ad prox', &c. Fitz. Ass. 110. If a Plea be to the Writ and over to the Assise, no Replication shall be to the Plea or to the Writ.

If the Defendant plead there's no Tenant of the Freehold named, the Plaintiff may reply the Defendant disseised him and made a Feoffment to persons unknown, and takes the profits, and this by the Statute of 1 R. 2. 9. 2 Inst. 445. 1 H. 5. 4. 12 H. 4. 21. 9 H. 6. 14. 22 H. 6. 16. 39 H. 6. 44. 1 E. 4. 24 E. 4. 17. 21 H. 6. 55. 14 H. 7. 17. And it seems this matter may be given in Evidence upon Nul tort, 2 Inst. 445. And if any Defendant be averr'd Pernor, he shall have no other Plea but traverse the disseisin and Pernancy, Br. Ass. 403. But if any Tenant of the Freehold be named, then it is out of the Statute, and he cannot avert Pernancy, 1 H. 5. 4. And it is there said that this Statute extends as well to Joynt-tenancy as Non-tenure. Pernor.

If the Assise be brought against many, and one takes the Tenancy upon him and pleads, and so another pleads absque hoc quod alter aliquid habet, &c. the Form of which, see afterwards, then the Plaintiff ought to chuse his Tenant Election of the Tenant. 1 Brownl. Entr. 60. 64.

nant at his peril, and demur upon the others if they have pleaded in Barr, for none without the Tenant can plead in Barr, Br. Aſſ. 403. Dyer 244. 35 Aſſ. 2. & 3. And then the Tenancy ſhall be firſt inquired and then the Barr, and if the Plaintiff miſelect, the Writ ſhall abate, 8 Aſſ. 1. 44 E. 3. 23. per le Reporter, 9 E. 3. Br. Aſſ. 383. But others conceive that the Plaintiff ſhall be barred, as Lit. 33. H. 6. 36. a. 20 Aſſ. 4. Mes 42 Aſſ. or 12 Aſſ. 1. Contr. although the Plaintiff miſelect his Tenant, if there be a Tenant and Diſſeiſor named it is ſufficient and the Plaintiff ſhall recover, and ſometimes it hath been admitted that the Tenant after he hath been elected ſhall plead in Barr, 28 Aſſ. 42. 22 Aſſ. 7. but 48. E. 3. 7. is Contr. But if there be many Defendants who plead ſeverally in Barr and no traverſe, ſans ceò qu' l' auter riens ad, the Plaintiff needs not Elect his Tenant, but may reply that they are Joynt-tenants, and plead to the ſeveral Barrs, Kell. 117. but if a Diſſeiſor plead in Barr, and the Tenant plead to the Aſſiſe, the Plaintiff is not bound to Elect, but for his advantage he may.

Veigne l' aſſiſe ſur le title.

If the Plaintiff makes his Title at large, then the Tenant may ſay Ven' l' Aſſiſe ſur le title, 15 H. 7. 13. So if he Confeſs and avoid the Title of the Defendant, &c. and all this appears at large, 5 H. 7. 30. Note where the Aſſiſe is taken upon the Title at large, it ſhall inquire of the ſeiſin and diſſeiſin, but if upon traverſe of the Barr, then in right of Damages only; and note that if the Title of the Plaintiff be by matter of Record or matter ariſing in a Foreign County which is not triable by the Aſſiſe, then he ſhall not ſay, Ven' Aſſiſa ſuper titul', Finch 98. b. 5 H. 7. 29. But if the Tenant plead an ill Barr, and the Plaintiff makes Title, it ſhall be as a Title at large, and any other Title ſhall ſerve the Plaintiff, and the ſeiſin and diſſeiſin ſhall be inquired, Kell. 170.

Voucher.

The Tenant ſhall not Vouch any perſon not being party to the Writ or preſent, and who will preſently enter into the Warranty, 8 Aſſ. 17. He cannot vouch after Plea by Bailly, Fitz. Aſſ. 144. 8 E. 3. 39. So of Receit if it be alledg'd that the Land is ſeis'd into the King's Hands, the Eſcheator ſhall be examined, &c. 9 H. 7. 8. But if the Eſcheator be not preſent, it ſhall be inquired by the Aſſiſe, but if the Tenant Infeoff the King hanging the Writ, the Aſſiſe

Receit.

sise shall be awarded, 38 Ass. 16. But if the King have interest, it shall not. Rege in Consulto, 22 Ass. 24. 28. Ayde del roy.

If the Plaintiff plead any Foreign matter or fact done in a Foreign County, or there are Witnesses named which live in a Foreign County, the Assise shall be adjourned in B. and there tried, or by Nisi prius in the Foreign County, and the Jurors may there inquire of Damages as incident; but if the Witnesses do not appear upon the grand Distress, the Assise shall be awarded. 8 Ass. 15. 5. Ass. 7. Or if the Tenant make default it shall be remanded and taken at large, 17 Ass. 31. 39 Ass. 3. 10. If the matter in bart be found against the Tenant, it shall be remanded in right of Damages, but if the Plaintiff will release his damages, he shall have Judgment presently in B. 8 Ass. 15. 6 Ass. 4. 14 H. 4. 9, 10. Where one pleads a Foreign matter, and in Conclusion prays it may be inquired by the Assise, he was ousted of Adjournment, because he did not pray it might be inquired per Patriam; so the Justices may by the Statute of 9 H. 3. 12. adjourn at B. for difficulty, where the Justices may adjourn before themselves in their Circuit or at Westminster, &c. Dyer 375. 47 E. 3. 1. 27 Ass. 1. 12 H. 4. 19, 20. And if the Assise be adjourned in B. for difficulty they may plead to Issue, and then it shall be adjourned into the proper County, 1 H. 4. 4. Foreign Plea. Adjournment.

Adjournments shall be Indorsed upon the back of the Pannel, Plowd. 415. And upon a general Patent the adjournment shall be from one Sessions to another, but upon a Special from day to day, 32 H. 6. 10. Fitz. Ass. 20. Associates may adjourn as well as the first Justices by Writ of Si non omnes, &c. 12 H. 4. 19. Upon adjournment in B. it is an exception that the Justices have no Patent, 29 Ass. 21. The Plaintiff may Elect his Tenant after the Assise is remanded, 23 Ass. 16. And the Assise shall be demanded every day of adjournment upon demurrer, &c. although it shall not be taken, 44 E. 3. 11. If adjournment be upon the Plea of one of the Defendants, the others have no Continuance, but when the Assise is remanded, they shall be re-attach'd, 22 Ass. 11. because they had no Continuances, nor shall plead, 22 Ass. 14. yet, 12 Ass. 12. & 13. is, that if one of the Tenants be adjourn'd, the other shall have idem dies. Quær. tamen; Note that Assises usually are adjourned for difficulty, to trie[a Foreign Issue and upon demurrer. Remand.

The

Continuance. The continuance of an Aſſiſe ſhall be by Juſticiarii non adviſantur, and not by dies dat. 22 H. 6. 12. And if the Tenant appear by Bally, the Continuances ſhall be between the party and the Bally, 1 H. 4. 4. And ſo of dies dat' partibus præd' ac partibus & Ballivo, 11 H. 7. 11. And there ought to be Entries made of every Juror ſworn and Continuances from day to day, otherwiſe it is error, 39 H. 6. 17. 38 H. 6. 11. If an adjournment be to Weſtminſter for difficulty, no Proceſs ſhall be awarded againſt the Jurors, otherwiſe of an adjournment to the next Aſſiſes, R. Entr. Aſſ. Barr. 4. And if the Defendant have a day over the Continuance ſhall be by idem dies dat' eſt partibus, and not to the Defendant, ibidem per non miſit Bre' and againſt the Jurors, ibidem Contin' 1. 2.

Proceſs. The Proceſs in Aſſiſe againſt the party is Attachment, and upon default or Nihil returned, the Aſſiſe ſhall be taken, but againſt the Jurors it is Summons Hab' Corpor' and Diſtringas ad infinitum, R. Entr. in Proceſs, and the Jurors ſhall not be put to Mainprize the firſt day, 7 Aſſ. 14. And upon Diſcontinuance upon non Ven' of the Juſtices, a Re-attachment againſt the Party and Re-ſummons againſt the Jurors; but if a diſcontinuance be after the Receit of the Wife, a Re-attachment ſhall be againſt the Huſband and Wife, or Wife ſole, 24 E. 3. 23. If the Tenant make default upon adjournment and ſo the Aſſiſe is awarded by default, and after there be a diſcontinuance for non Ven' of the Juſtices, no Re-attachment ſhall be of the Tenant, becauſe he hath loſt his anſwer and challenge, 28 Aſſ. 42. If one Defendant plead a Foreign Plea which is adjourned and remanded, a Re-attachment ſhall be awarded againſt the other Defendant, but a general Re-attachment is not ſufficient, 26 Aſſ. 3. If the Tenant bring a Certiorar' to remove the Aſſiſe into the King's Bench, and the Record be delivered to the Tenant, and he retains the Record, upon motion a Cap. ſhall be awarded againſt him, 1 Aſſ. 14. Remain pro defectu viſus, R. Entr. Aſſ. Barr. 2. Proceſs againſt Joynt-tenants by Deed, R. Entt. Aſſ. in Brief. 8. Precept to the Sheriff in Aſſiſe, Raſt. Entr. Aſſ. in ſpecial, general Precept, ibidem, in Proceſs. 1.

No Receit lies in this Action but of the party to the Writ who appeared, neither after the Assiz awarded, 3 H. 6. Br. 299. But lies after an adjournment in B. 3 H. 4. 18. Or upon failure of Record, 7 H. 4. 6. Or at the day after, reman' pro defectu Jurat' vel Recognitor', 13 Ass. 1. Receit.

If the Tenant make default, the Assiz shall be awarded at large upon the seisin and disseisin and damages, but not upon the Title of the Plaintiff, Pl. 415. So if he make default upon the adjournment of a Foreign Plea, it shall be remanded and taken at large, 39 E. 3. 10. 17 Ass. 31. 22 Ass. 11. 36 Ass. 29. And if there be a discontinuance for non Ven' of the Justices, there shall be no Re-attachment because he has lost his Answer and Challenge, 22 Ass. 11. Baily pleads to the Writ and over to the Assiz, and makes default, it shall be taken at large without respect to the Plea to the Writ, 10 Ass. 30. And if it be against many, and one plead a Foreign Release which is adjourn'd and makes default, it shall be awarded at large without a Re-attachment against his Companions, 28 Ass. 42. but with a Re-attachment against his Companions, per 22 Ass. 11. R. Entr. Ass. in Rent. 3. In Assiz of Rent, if the Tenant makes default, the Plaintiff shall ascertain what Rent he demands, 2 Ass. 4. 17 Ass. 29. 26 Ass. 6. But he may make his Title by Deed bearing date in a Foreign County, Dyer 153. b. And where demand was of a Rent-service, the Jury found hors de son fee, and a Rent by prescription, 13 Ass. 4. Awarded at large by default.

If an Infant be Plaintiff or Defendant, the Assiz shall be taken at large, but if a Record be pleaded in Barr, he shall answer to it, 22 H. 6. 51. or Confess and avoid it, 26 Ass. 16. And although the Deed of his Ancestour with Warranty be pleaded, it shall be taken at large, 14 E. 3. 10. 12 H. 4. 19. 20. If a Fine of the Ancestour be pleaded in Barr, although he shall answer to it, yet the Assiz shall be taken at large, 28 Ass. 52. But if an Infant plead in Barr and joyn Issue out of the Point of the Assiz, the circumstances of a Deed pleaded against him, i. e. the delivery, time and place, &c. shall not be inquired, otherwise if he had pleaded to the Assiz at large, 28 Ass. 51. Fitz. Ass. 99. 116. 10 Ass. 1. But if a Barr be pleaded against him, it is At large for the Infancy of the Plaintiff or Tenant.

otherwise, 31 Ass. 18. 22. 38 Ass. 24. Fitz. Ass. 99. Kell. 111: yet he may plead hors de son fee, and shall be taken at large, 43 Ass. 5. And if he plead a Record and fail, yet it shall be taken at large, Fitz. Ass. 442. 367. Br. 461. * And if one Plaintiff be an Infant and his Coparcener of full Age, and the Deed of their Ancestour be pleaded in Barr with Warranty, it shall be taken at large for the Infant, and the other shall answer to the Deed and Warranty, 26 Ass. 65. 29 Ass. 53. An Infant shall not be a Disseisor by his assent or admittance in pleading, 3 H. 4. 16. 28 Ass. 52. Although he plead by Bailly, yet he shall not be admitted to plead again after the Assise awarded, 8 Ass. 17. or Jury sworn 3 Ass. 11. But if it be awarded against him by default and reman' pro defectu recognitor' at another day he shall be admitted to plead in Barr, 29 Ass. 36. If one be of full Age, and Sues as an Infant per Guardian, the Tenant may plead in Barr and say, that he is of full Age, and pray that he may be viewed, Fitz. Ass. 116. 12 E. 3. 12 Ass. 36.

* Kelw. 111. a.

View of the Recognitors.

Sir of the Recognitors at least of the Assise ought to view the Lands before the taking of the Assise, that the Plaintiff may by them be put into Possession by their view, 22 E. 4. 34. But if things not visible, as Tithes and profits of Fairs, &c. View needs not; but of Offices to be exercised, in a certain place, the view shall be where the Office is exercis'd, as of an Herald's Office at the place where the Funeral was. Of Filacers Office, where his Seat is in Court, 2 Brownl. 268. And if the Jurors have had the view without the Sheriff it is sufficient, Dyer 62. If they know the Land it is sufficient without the View, 19 H. 6. 43. If they be near the Land though a Hill intervene, it is sufficient, Dyer 18. b. The Recognitor shall be examined upon a Voir dire whether they have had view, and if not, they shall be adjourned upon a pain to take the View, 19 H. 6. 43. 22 Ass. 22. And if they make not the View upon demand, they shall be adjourn'd upon pain, and to be amerc'd, per 24 E. 3. 26. 50.

Where Assise shall be brought for a Rent.

If Rent be granted out of Land in one County, and a distress to be made in another, the Assise shall be brought where the Rent issues, 31 Ass. 27. 41 Ass. 3. 10 Ass. 4. 10 E. 3. 18. Br. Ass. 150. If a Rent-charge be granted out of such a piece of Land, and a power to distrain in another, the Tenants of

Tenants of both Lands to be named.

both Lands shall be named in the Assise, 1 Ass. 10. 10 Ass. 4. And it was held by Pigot, 7 E. 4. 1. That if Issue be taken upon a Collateral matter out of the point of the Assise, no view needs to be, Quære Tamen.

By the Statute of 42 E. 3. c. 11. the Sheriff shall make his Pannel of the Recognitors four days at least before the Sessions; but by the Statute of 6 H. 6. c. 2. the Sheriff shall make it Six days at least before the Sessions, and give the parties Copies of it they be demanded, under the Penalty of 40 l. Return of the Recognitors.

The Plaintiff may make his Challenge to the Sheriff in his Original Writ, and have it determined before the Justices, Pl. 73. If the Assise be discontinued by default and the Plaintiff Challenge one of the Polls, they shall be presently withdrawn, 28 Ass. 41. In all other Cases the Ordinary Rules of Challenges shall be allowed; only in a Certificate of Assise the Party shall not have his Challenges to the Recognitors of the first Inquest, 12 H. 4. 9. Challenge to the Array shall not be till Issue joyned, nor shall be taken as in other Cases, and then Process shall be awarded to the Coroners, Vid. le form R. Entr. Ass. in Challenge. Challenge.

Tales de Circumstantibus shall not be granted, but Decem Tal' Co. 10. 105.

Trial of all Assises shall be in the proper County, but if antient Demesne be pleaded, it shall be adjourn'd and tried by Doomsday Book, R. Entr. Ass. in antient Demesne, 1, 2. 22 Ass. 24. If the Land be alledged to be in another County it shall be inquired by the Assise, 29 Ass. 51. Bastardy in Issue shall be adjourned and tried by Certificate of the Bishop, 38 Ass. 30. But if it be not the point in Issue, it shall be tried by the Assise, 39 Ass. 14. 38 Ass. 24. A foyner Assise pleaded in Bar shall be tried by both Juries if in the same County, 22 Ass. 16. Of an Office in the Common Pleas, shall be tried by Officers and Attorneys in the same Bench. If a Foreign Plea be pleaded, it shall be adjourned into the Common Pleas, and shall be there tried by a Jury in the Foreign County. Non attachiat per 15 days shall be tried by examination of the Sheriff or Bailiffs if present, otherwise it shall be inquired by the Assise, 9 H. 4. 1. Fitz. Ass. 461. If it be pleaded that the Land is seis'd into the King's Hands, it shall be tried by examination of the Escheator if present, otherwise by the Assise. If the Tenant plead a foyner Recovery, and the Plaintiff averr it to be of other Lands, it shall Trial.

be tried by the former Recognitors and the new ones, 22 Ass. 16. but if he say, Nient Comprize, it shall be tried presently by the Assise.

Matters inquirable by the Assise.

If the Tenant plead in abatement or to the Assise, the seisin and disseisin shall be inquired, 26 Ass. 65. So if Issue be upon Villenage, 13 Ass. 12. But if pernancy be in Issue, it shall not be inquired, 30 H. 6. 1. Fitz. Ass. 16. and so in all Cases where an Ouster is expressly or implicitely Confessed it shall not be inquired, as if a Release be pleaded, 8 Ass. 15. and so if a Deed be pleaded and not found, 11 Ass. 26. 17 Ass. 17. 17 Ass. 2. Or if a Record be pleaded and fails, 23 Ass. 3. 12 Ass. 1. 11 H. 4. 51. 5 Ass. 16. If one plead to the Assise, and another Release, seisin and disseisin shall be inquired against one in right of Damages, against him who pleads the Release, 23 Ass. 11. Or if the Tenant pray the Assise upon the Title, damages only shall be inquired, 27 Ass. 65. So if the Tenant plead a Deed, &c. and after wave it, it shall inquire only of the seisin, Fitz. Ass. 117. 13 E. 3. 34 H. 6. 32. 16 Ass. 1. If the Barr be not good, seisin and disseisin shall be inquired, 2 H. 7. 4. 32 H. 6. 15. Entr. 28 Ass. 21. 6 H. 7. 2. Vid. Co. Lib. 10. 119. 11 H. 4. 27. That although the Defendant plead a Release, or, &c. which is found against him, yet the seisin and disseisin shall be inquired.

What shall be a good seisin to have an Assise.

The Heir shall have an Assise of the seisin of his Termor, 45 E. 3. 25. So a Reversioner by Fine, 44 E. 3. 16. Successor upon the seisin of his Predecessor, Pl. 193. a. 46 E. 3. 14. 26. Ass. 36. 34. Ass. 1. If one enter for me, and in my Name, this is a good seisin for me to have an Assise though I know nothing of the Entry, but approve of it afterwards, 11 Ass. 11. If one dare not Enter, but approach and is disturbed, this is sufficient seisin, 38 Ass. 23. Rent granted upon Condition which is broken, and distress and Rescouse made, Fitz. Ass. 96. Seisin of part of the Rent is good, 8 E. 3. 12. Fitz. Ass. 141. Co. Lib. 6. 57. a. But seisin of Fealty is not good for Rent to have an Assise, but an Avowry for it, Fitz. Ass. 432. Br. 454. Seisin of Rent by Tenant by Statute, Elegit, or by Baily or Procurator per Mandatum Domini, by the Tenant after a Feoffment and before notice is good, Co. Lib. 6. 57. But Tenant for

Years

Years may gain seisin for the benefit of the Revertioner, ibidem. If I have right to two Acres, and my Entry into one is taken away in one County, and I Enter into that in which my Entry is taken away in name of both, its not good, otherwise if my Entry had been lawful, Kell. 20. b.

The Queen cannot be a Disseisee or Disseisor, but if the Patentee Enter where the King hath no right to grant, the Patentee is a Disseisor, 1 H. 4. c. 8. And if the Escheator or any other Officer of the King seise Land without Cause, he is a Disseisor, W. 1. c. 24. 3 E. 1. c. 24. The King cannot be disseised if he have the Land as Guardian only, 8 H. 4. 17. But Fitz. Ass. 431. seems that he may be a Disseisee quod mirum. If the Guardian make a Feoffment, both Feoffor and Feoffee are Disseisors, W. 1. c. 47. W. 2. c. 25. If the Demandant Enter pending a Præcipe quod reddat, he is a Disseisor, 40 E. 3. 42. If the Demandant after Verdict and before Judgment release, and then sue Execution, he is a Disseisor, 5 H. 7. 4. 43 Ass. 19. Fitz. Ass, 70. If one execute an Office by appointment of the Court, to which another hath right, he is a Disseisor, Dyer 115. If Estovers are to be delivered without request and are not, it is a disseisin, Co. Lib. 5. 25. If the owner of the Soil depasture all the grass, or cut all the Wood, he is a Disseisor of Common or Estovers, Co. Lib. 9. 112. b. Br. Ass. 490. Some say that the Plaintiff shall not have a distress for Rent before he hath recovered it; if he do distrain it is a disseisin, 46 E. 3. 13. If the Demandant upon a void Recovery Enter, he is a Disseisor, 28 Ass. 17. 4 H. 6. 26. 8 Ass. 22. otherwise if it be only Voidable, ibidem. The Lessee surrenders or levies a Fine to the Lessor, and continues Possession, he is a Disseisor or no disseisor at the election of the Lessor. Dyer 62. If the Termor be Ousted it is a disseisin, or not, at the election of the Lessor. Dyer 178. If my Tenant pay my Rent to another, its a disseisin, or not at my election; of Common, Rent, Tithes, or other profit apprender, a Man shall be disseis'd or not disseis'd at his election, 8 Ass. 4. Hob. 1. Edit. 461. If Tenant at will or sufferance makes a Lease for Years, he is a disseisor, 12 E. 4. 12. or if Tenant for Years make a Feoffment, 10 E. 4. 18. 49 H. 6. 18. 3 E. 4. 17. If a Termor continue Possession, after the Term ended, he is no disseisor, 9 H. 4. 24. Quær. if he be not a Disseisor, if the Lessor Enter and

Who shall be said a Disseisor who not.

Disseisin at election.

and he continues Possession after, I conceive he is. A Disseisor makes a Lease rendring Rent, the Disseisee Re-enters, the Lessee continues payment of the Rent, he is a Disseisor, Dyer 134. Br. Disseisor 76. An Infant or Feme Covert shall not be Disseisors by their assent or admittance in pleading, 13 Ass. 1. 3 H. 4. 7. 2 Ass. 2. 16 Ass. 1. 11 Ass. 14. 12 Ass. 33. A Feme Covert is Infeoff'd, the Feoffee is a Disseisor, 9 Ass. 2. A Feme Covert may be a Disseisor by her own act, 21 E. 4. 53. If one Enter by Release of an Infant, he is a Disseisor, 7 Ass. 17. If a Guardian assign Dower to a Wife who is not intitled, they are both Disseisors, 21 E. 3, 4, 5. If a Manor extend into two Counties and one Enter into one part in the name of both, he is not a Disseisor of the other, 22 H. 6. 10. If one Enter to my use and I consent before or after, I am no Disseisor except I command it, 15 E. 4. 5. per Lit. 21 H. 7. 35. Contr. 15 Ass. 11. 12 E. 4. 9. 38 Ass. 9. He that diverts a Watercourse is a Disseisor of a Mine, 9 Ass. 19. An Attorney who delivers seisin to me by one who has no right is a Disseisor, 10 Ass. 22. If he makes Livery in another form than his Warrant, he is a Disseisor, 12 Ass. 24. 1 H. 4. 3. 26 Ass. 17. If one would enter into Land to which he hath right and is disturbed, it is a disseisin, 11 Ass. 21. To councel one to make an unlawful Entry is a disseisin, 14 Ass. 12. 17 Ass. 14. 27 Ass. 30. If I am cutting Trees, and one who hath right Command me to forbear, this is a disseisin, ibidem. One who Commands a disseisin, is a Disseisor, 29 Ass. 59. But if one Command another to Enter, and he hath no right, he who entred only is a Disseisor, 34 Ass. 12. If one enter by a void Grant, he is a Disseisor, 24 E. 3. 32. Lessee for Life rendring Rent upon Condition which is broken, the Lessor distrains and detains the Distress, and Enters, it is a disseisin, 14 Ass. 11. If a Termor alien to one for Life, Remainder to another who Enters, he is a Disseisor, 43 Ass. 45. 50 E. 3. 22. He who sues Execution against the Issue in Tail, is a Disseisor, Fitz. Ass. 77. 18. E. 3. The Feoffee of a Villain is no Disseisor, Fitz. Ass. 32. If Tenant by Elegit make a Feoffment, they are both Disseisors, Br. Tit. Elegit 19. If one levy Rent upon my Tenant by Coertion, he only is the Disseisor; but if the Tenant pay it upon a voluntary Agreement, they are both Disseisors, 16 Ass. 15. Fitz. Ass. 439. If my Tenant Attorn to a Stranger, they are both Disseisors, Fitz. Ass. 470.

Infant or Feme Covert shall not be disseisors

Denyer, none ready upon the Land upon demand, or to manure the Land, or inclosure, is a disseisin of a Rent seek, Lit. Sect. 233. 237. 36 Ass. 7. 49 Ass. 56. Rescous, Replevin and inclosure of Rent-service, Rescous Replevin inclosure, and denyer, and menaces by the Tenant are disseisins per Lit. Sect. 238. 9 Ass. 7. 14 E. 4. 4. Lit. Sect. 240.

If a Corporation be Plaintiff in an Assise, it shall be inquired whether it be not by Collusion to mortmize the Land, otherwise it is Error, Rast. Entr. Ass. in Corps politick, 1, 2, 3. Mortmain.

In all Cases where the seisin and disseisin is not to be inquired, the Assise shall be awarded in right of damages, 17 Ass. 2. And therefore if a Record be pleaded and fail, damages only shall be inquir'd, 15 Ass. 16. Damages where to be inquired only.

In Certificate of Assise the Tenant shall recover double damages, per W. 2. c. 25. If the Tenant fail of the Record, the Plaintiff shall recover double Damages, W. 2. c. 25. Double damages given in a Special Assise upon a forcible Entry per Stat. 4 H. 4. c. 8. The Plaintiff shall recover treble damages against him who Enters by Patent of the King if he hath no right to grant, per 1 H. 4. c. 8. Other matters concerning damages.

Treble damages in Assise of Common of Pasture per Stat. of W. and Merton, of Approvement by 3 and 4 E. 6. c. 3. Treble damages is given against a Disseisor with Force by 8 H. 6. c. 9. If the Sheriff, Escheator or other Officer of the King by Colour of their Office disseise any, he shall recover double damages, W. 1. c. 24. And if a Disseisor alien to defraud the Plaintiff of his Action, he may within the Year bring his Action against him and recover double damages per 1 R. 2. c. 9. And if the Tenant plead Joynt-tenancy by Deed, which is found against him, the Plaintiff shall have double damages by the Statute of Conjunctim Feoffatis, 24 E. 3. Treble damages.

At Common Law no damages were to be recover'd but only against the Disseisor, but by the Statute of Glocester, c. 1. it's given against the Tenants, Et quod quisque respon- der' pur son temps, &c. but then the Plaintiff ought to aver the insufficiency of the Disseisor and pray that it may be inquired, Against whom damages are to be given. At Com. Law. Per Stat.

quired, and who hath taken the profits, and then every one for his time who is party to the Writ ſhall be charg'd, but Quær. if the Sheriff return the Diſſeiſor inſufficient, ſi Executionem ne ſier agard againſt the Tenant. It ſeems it ſhall ſay 31 Aſſ. 5. 40 E. 3. 44. 49 Aſſ. 3. 22 Aſſ. 28. 35 Aſſ. 5. And it ſeems this Statute extends to all the Caſes aforeſaid where double or treble damages are given, 2 Inſt. 285. If a Reverſioner bring an Aſſiſe upon the Entring upon his Tenant who is a Termor, he ſhall recover no damages; and damages may be recovered becauſe of the Improvment, 14 Aſſ. 13. And damages ſhall be recovered hanging the Aſſiſe after Verdict and before Judgment, 31 Aſſ. 31. after an adjournment and before Judgment, 31 Aſſ. Fitz. Abbe. 17. In an Aſſiſe of Rent the Plaintiff ſhall recover the arrears and damages againſt the Tenant who had been but Tenant for a Month, 33 H. 6. 46. Succeſſor ſhall recover damages and arrears in the time of the Predeceſſor, Fitz. Abbe. 17. And where double or treble damages are recovered, they ſhall be doubled or trebled by the Court, Br. Aſſ. 478.

Approvement. If the Tenant in Aſſiſe of Comuon, plead approvement upon the Statute, ſufficient or not ſufficient ſhall be inquir'd per le Aſſiſe, Fitz. Aſſ. 137. 7 E. 3. 67.

Force. And it is to be inquired by the Aſſiſe ex Officio, whether the Defendant entred with Force, otherwiſe it is Error, although it be not in Iſſue, 2 H. 6. 40 Br. Aſſ. 67. If it be found with Force, the damages ſhall be trebled by the Court, Br. Aſſ. 478.

Non-ſuit. The Plaintiff may be Non-ſuited after Verdict upon any other day of the adjournment, if he made default, 47 Aſſ. 1.

Verdict. If the Defendants are found guilty in any part of the Tenements put in View, it is ſufficient, 12 Aſſ. 4. The Recognitors may give a Verdict at large in all Caſes, though upon a ſpecial Iſſue, Co. Lib. 9. 12. b. Pl. 93. A Deed by which the Plaintiff makes his Title may be found without pleading, 18 Aſſ. 3. The Jury may find a Condition made at the livery, but not a Defeaſance after, or a Releaſe or a Feoffment with Warranty, for things only ſhall be found which cannot be pleaded, Fitz. Aſſ. 359. 7 H. 5. but they

cannot find matter of Record, 26 Ass. 2. If the Paintiff makes his Title in his Plaint, another Title may be found, Viz. a Verdict upon Sir several special Issues, R. Entr. Ass. in Barr. 3.

If a Foreign Issue be adjourn'd in B. Re-pleader shall be there, 22 H. 6. 18. If the Plaintiff make a good Title, and the Tenant misrejoyn, no Re-pleader shall be, but the Assise go upon the Title, 5 H. 7. 29. But if they be at Issue upon an insufficient Barr, there shall be a Repleader, 22 H. 6. 19. But by this Book it seems they shall re-plead as in other Actions. Re-pleader.

By the Statute of W. 2. c. 25. a Certificate of Assise is given, and this is where the Tenant hath pleaded by Baily to the Assise, or the Assise is taken by default, where he hath matter of Record, or a Release, or other matter in writing which may discharge him, then he may come before or after Judgment and pray that it may be inquir'd, or have a Certificate that it was not well eramin'd, and upon this the Jury shall appear again and be Sworn to try this matter, and it shall be sued before the same Justices, or others in B. or B. R. If it happen to sit in the same County: And it seems the Justices before whom the Assise was taken, may upon such matter make a Certificate and warn the Party and Jury without any new Commission, and restore the Possession, and double damages: If the Tenant hath matter of Record, then a Scir' fac' shall issue against the Party, and restitution and double damages against the Plaintiff, and he shall be Imprison'd. But if the Certificate be had before other Justices, then there ought to be a new Commission; and although some of the Jurors be dead, yet they may proceed with others if there be Two alive of the former, F. N. B. 183. b. 7 H. 4. 45. 12 H. 4. And if the Record of the Assise be remov'd in B. the Certificate may be sued there although that the Land be in another County, 33 H. 6. 20. 21 Ass. 7. And the Process is Summons against the Jurors, and a Venire against the Parties, and after a Distringas, &c. and it may be tried by Nisi prius, F. N. B. 183. And it lies upon a Defeasance which bears date in a Foreign County, and there is to be * tried by adjournment in B. 2 Inst. 415. And it may be tak'n by default, and then the Assise shall inquire at large of all Circumstances, as if it be upon a Re- Certificate of Assise. Process in Certificate. Quer. inde 23 E. 3. 21.

Assise inquire at large.

lease of the Ancestour with Warranty, it shall be inquir'd whether he be his next Heir, whether he were of full Age, sound memory, out of Prison at the time of the making, if the Tenant was seiz'd at the time of the Release, or if the Plaintiff had any new Title after, 26 Ass. 5. It lies upon a Fine, 32. upon a gift in Tail, 13 Ass. 5.

Abridgment of Plaints.

If the Plaintiff abridge his Plaint at any time before Judgment he may, and therefore it is good policy, if the Assise find against the Party for any part to abridge for it, Kell. 116. 6 H. 7. 78. Dyer 88. But by Br. Abridg. 15. it seems he cannot abridge after Verdict, nor can abridge as to the Will after a Challenge for the Hundred, 28 Ass. 38. Contr. tenetur. Br. Abr. 15. He cannot abridge in a Will in an Assise, otherwise in Dower, 21 E. 4. 24. He may abridge after adjournment, 10 H. 6. 22. He cannot abridge part of an intire Rent, 65. b. nor an Entire Manor, 4 E. 4. 33. 6 H. 7. 38. Kell. 116. b. But in an Assise of Land and Rent he may abridge, 14 Ass. 9. So of a Messuage and Land, Dyer 62. a. If the Plaint be of Acres, he may abridge any of them, 4 E. 4. 33. Kell. 116. But now by the Statute of 21 H. 8. c. 3. If the Tenant plead in Barr to any part of a Manor, as the 3d, 4th, or 5th. part, the Plaintiff may in that abridge his Plaint, which seems to be against the Law before in the 5 H. 7. 7.

Judgment in Certificate.

The Judgment in Certificate of Assise is that the Tenant shall be restored to the Land, and recover double damages, and the Plaintiff Capiatur, Fitz. Judgment. 189. If an Assise be brought against Two, and one plead a Record and fail, upon a Release of damages the Plaintiff shall have Judgment, 44 E. 3. 23. Contr. 44 Ass. 32. If the Plaintiff makes default after Verdict, Quær. whether the Judgment shall be upon the Verdict or Non-suit, 12 Ass. 23. 31 E. 3. 30. Semble sur le nonsuit, 47 Ass. 1. If the Defendants are found guilty in any part, it is sufficient and in the Entry of the Judgment the Plaintiff shall not be amerced for the residue, 12 Ass. 4. 8 Ass. 33. But if any of the Tenants be not found guilty, he shall be amerc'd as to them, Rast. Entr. Ass. Barr. 2. 10. Office 1. 31 Ass. 31.

Amercement.

Judgment in fovent distress.

The Judgment in Assise of fovent distress is, That he shall hold the Land without multiplicity of distress, it seems in the Case Si quis pascit, &c. 8 Co. Webb's Case. If a

Foreign

Foreign Plea be adjourn'd in B. and there found againſt the Defendant, the Plaintiff may releaſe damages, and have his Judgment, Dyer 250. b. The Judgment between a Tenant in Common and a Joynt-tenant ſhall be, That the Plaintiff ſhall hold one moity in ſeveralty, 10 Aſſ. 17. 7 Aſſ. 16. Contr. 28 Aſſ. 35.

Execution. The Execution is an Hab' fac' ſeiſinam and Elegit, Cap', Fier' fac' for Coſts and damages, but after the Commiſſion is determin'd, the Plaintiff may have an Action of Debt for the Damages and Coſts, or remove the Record in B. and there upon a Cap' for the Fine, he may pray the party in Execution, 33 H. 6. 20. If the Tenant hath one Acre in jure ſuo proprio, and another in jure Uxoris, and one is recovered, Execution ſhall be in his own Acre, 48 E. 3. 31. Or it ſeems that a Scire fac' for the damages may Iſſue upon the Aſſiſe remov'd in B. R. Raſt. Entr. Aſſ. in Execution. 3. and Scire fac' ibidem.

Error. Error lies not in B. but in B. R. only Dyer 250. It's Error to inquire of the Barr (before the Tenancy if there be ſeveral Tenants, or the Plaintiff elect his Tenant,) 11 H. 4. 68. If it be revers'd in B. R. it may proceed there de novo to Iſſue. 31 Aſſ. 18.

Impriſonment. If the Tenant plead a falſe Plea, he ſhall be Impriſon'd, 6 Aſſ. 4. If he plead Joynt-tenancy by Deed and it be found againſt him, he ſhall be Impriſon'd. Vid. plus. 31 Aſſ. 11.

Attorney. The Plaintiff or Defendant may make an Attorney per 13 E. 3. c. 1. Stat. of York. If the Defendant make many Attorneys and they differ in pleading, and one plead to the Aſſiſe and the other in Barr, the Plea to the Aſſiſe only ſhall be entred; but if for an Infant, the moſt beneficial, Fitz. Aſſ. 120. Warrant of Attorney entred upon the Roll. P. 17 H. 7. Rot. 402. Raſt. Entr. Aſſ. Corps politick, 2. Aſſiſe in ſpecial Warrant of Attorney, and the Husband an Attorney for the Wife.

Parcels. Regularly an Aſſiſe ſhall not be taken by parcels, and therefore if one plead as Tenant to parcel, and another as Joynt-tenant by Deed which is adjourn'd, idem dies ſhall be given to the firſt, becauſe it ſhall not be taken by parcels, 19 E. 2.

Fitz. Aſſ. 407. and yet 35 Aſſ. 2. & 3. the tenancy was firſt inquired, and then adjourn'd, and upon remand was taken at large, 16 Aſſ. 25. it was there taken by parcels.

Joynder in Action.

If there be three Coparceners and one diſtrain, the other ſhall have an Aſſiſe by themſelves only, 12 Aſſ. 12. If the Tenant plead ſeveral Barrs, they may reply jointly and plead to the ſeveral Barrs, Kell. 117. a. And one may join ſeveral Diſſeiſors and Tenants in one Aſſiſe, for ſeveral diſſeiſins, at ſeveral days in ſeveral places. Pl. 92.

Several Entries uſed in an Aſſiſe of Novel diſſeiſin, Viz.

The Form of pleading where there are 3 Tenants, and one pleads as a diſſeiſor, another as Tenant. 3d. as Tenant ſans cco q' l' autr' rien ad. Pleading dun Feoffment. I. S.

Et præd' A. B. & C. per V. Attornatum ſuum ven' & præd' A. dic' nul' injur' ſive diſſeiſinam præfat', &c. de Tenement' præd' cum pertinen' fecit, Et de hoc pon' ſe ſuper aſſiſam, Et præd' E. ſimiliter Ideo Capiatur inter eos Aſſiſa, &c. Et præd' B. reſpond' ut tenens liberi Tenementi Tenementor' præd' cum pertinen' in viſu Recognitor' Aſſiſæ præd' poſit' & in querel præd' ſpecificat' Et dic' quod Aſſiſa inter ipſum B. & præfat' E. in hac parte fier' non debet quia dic' quidam I. S. ſeiſit' fuit de Tenement' præd' cum pertinen' in viſu, &c. in dominico ſuo ut de feodo, Et ſic inde ſeiſit' exiſten' de eiſdem Tenement' cum pertinen' Feoffavit I. N. hend' ſibi & hæred' ſuis in perpetuum virtute cujus quidem Feoffament' idem I. N. fuit inde ſeiſit' in dominico ſuo ut de feodo cujus quidem ſtatum in præd' Tenement' cum pertinen', idem B. modo habet, Et præd. E. clam' Tenement' præd' cum pertinen' colore cujuſdam cartæ dimiſſionis ſibi inde fact' pro termin' vitæ ſuæ per præd' I. S. ubi nihil Tenementor' præd' cum pertinen' in poſſeſſion' ipſius E. per cartam ill' unquam tranſivit in Tenementa præd' intravit ſuper cujus quidem E. poſſeſſionem inde quidam I. G. in Tenementa præd' cum pertinen' intravit & ipſum E. inde expulit & amovit ſuper cujus quidem I. G. poſſeſſionem inde idem B. reintravit prout ei bene licuit, Et hoc paratus eſt verificare unde per' judic' ſi Aſſiſa inde inter ipſum & præfat' E. in hac parte fieri debet.

Colour.

Come Tenant ſans cco q' l' auter rien ad.

Et præd' C. dicit quod ipſe eſt ſolus tenens liberi Tenementi, Tenementor' præd' in viſu recognitor' Aſſiſæ poſit' & in querel' præd' ſpecificat' cum pertinen' abſque hoc quod præd' B. aliquod habet vel die impetracons' bris' original' præd' ſeu

unquam

unquam postea habuit in eisdem. Et dic' Assisa non quia dic' quod prad' E. nunquam feisit' fuit de Tenement' ill' cum pertinen' infra prad' 30 Annos de tal' Statu unde differri potest &c hoc, &c.

Nemy dene in. fra 30 Annos.

Et prad' E. dic' quod prad' B. est & prad' tempore impetracionis' hujus original' Assisæ prad' fuit tenen' liberi Tenementor' prad' cum pertinen' absque hoc quod prad' C. aliquid habet in eisdem & quod prad' plitum' prædict' C. superius in hoc placitat' idem E. dic' quod plitum' illius minus sufficiens in lege existit ad ipsum E. ab Assisa sua prad' versus eum habend' precludend' quodque ipse ad prad' plitum' modo & forma superius placitat' necesse non habet nec per legem terr' tenetur respondere. Et hoc paratus est verificare unde pet' judic' & quod ipse ad Caption' Assisæ prad' inde inter ipsum E. & prædict' C. procedere potest.

Ecclio & demurrer al auter.

Et prad' E. quod prad' plitum' prad' B. superius in hac' Assisæ placitat' idem E. dic' quod ipse per aliquam in eodem placito præclusus' ab Assisa sua prad' versus præfat' B. habend' precludi non debet quia dic' quod quidam G. S. fuit de Tenement' prad' cum pertinen' feisit' in dominico suo ut de feodo & sic inde seisit' existen' obiit inde seisit' post cujus mortem Tenement' prad' cum pertinen' descendebat cuidem T. S. ut fil' & hared' prad. I. virtute cujus idem T. in Tenementa prad' cum pertinen' intravit & fuit inde seisit' in dominico suo ut de feodo, & sic inde seisit' existen' idem T. inde Feoffavit ipsum E. hend' sibi & hared' suis per quod idem E. fuit inde seisit' in dominico suo ut de feodo quousque prad' A. B. & C. ipsum E. inde injuste &c. disseisiver' postea prad' E. superius versus eum quer' et hoc paratus est verificare unde per judic' & quod Assisa inter ipsum E. & prafat' B. Capiatur.

Title at large.

Et prad' E. pet. quod super dictum ticul. præd. E. ven. Assisa & prad. E. similiter Ideo super ticul. ill. Assisa illa capiatur inter eos, &c. Et recognitor. exact. non vener. Et super hoc Assisa prad. reman. capiend. usque tal. diem prox. futur' pro defectu. Recognitor. &c. Ideo Vic. tunc habeat Corpor. &c. & interim, &c. idem dies dat. est præfat. A. B. &c. hic &c. Ad quem diem hic vener. partes prad. per Attornatum suum prad. & recognitor. Assisæ prad. null. eorum ven. super hoc Assisa prad. ulterius continuatur hic usque, &c.

Ven' l' Assise furle title.

Reman' pro defectu recognitor.

Hab. Corpor.

prox.

Diſtring. recognitor. prox. futur. &c. Et Vic. Diſtring. recognitor. Aſſiſæ præd. &c. & interim &c. Idem dies dat. eſt partibus præd. hic. &c. Ad quem die' Aſſiſa præd. reman. fine die eo quod R. nunc Rex tertius poſt Conqueſtum ut verus & indubitatus Rex ejuſdem Regni de jure divino & humano Regimen & regiam dignitatem Regni

Diſcontinuance per demiſe del roy. ill. E. 5. nuper Rege abinde legitime remoto in eum actualiter ſuſcepit. Poſteaque ſcilicet tal. die, &c. ven. hic in Cur. præd. E. per Attornatum ſuum præd. & pet. bre. ipſius Do-

Reſummon' & Reattach'. mini Regis nunc. Vic. N. dirigend. ad reſummonend. recognitor' Aſſiſ. præd. quod ſint hic ad faciend. recognitionem ejuſdem Aſſiſæ, &c. & etiam ad reattachiand. præfat. A. B. & C. vel Ballivum vel Ballivos ſuos ſi ipſi invent. non fuer. quod tunc ſint hic auditur. recogn. ill. Et return. hic, &c. Et in-

Reman' pro defectu. terim, &c. Idem dies, &c. Ad quem diem, &c. Et Recognitor. Aſſiſæ præd. reſum. &c. null. eorum ven. ſuper quo Aſſiſa præd. continuatur, hic uſque tal. diem, &c. Ideo Vic. tunc

Hab. Corpor. hic habeat Corpor. recognitor. &c. & interim, &c. Idem dies

Reman. pro defectu viſus. &c. Ad quem diem, &c. Et Recognitor' exact' ven' ſed quia recognitor' præd. non fecer' viſum de Tenement. præd. Ideo Aſſiſa præd. reman. Capiend. uſque tal. diem, &c. Et Vic.

Diſtring. recognitor. diſtring. &c. Idem dies dat. &c. Et Recognitor. præd. interim

View ſur paine. faciant viſum de Tenement. præd. ſcilicet tal. die, &c. Videlicet quilibet eorum ſub pœna 10 s. ad quem diem hic ven' tam, &c. Et Recognitor. exact. ſiliter. ven. qui ad veritatem de

Verdict. premiſſis dicend. elect. triat' & jurat. dic. ſuper Sacrament. ſuum quod præd. E. fuit ſeiſit. de Tenement. præd. in eorum viſum poſit' & in querel. præd. ſpecificat. cum pertinen. in dominico ſuo ut de feodo, &c. quouſque præd. A. B. & C.

Per force. inde injuſte & ſine judicio, ac vi & armis infra 30 Annos prox. &c. diſſeiſiver. ad dammum ipſius E. occaſione diſſeiſinæ præd. ultra Miſ. & Cuſtag. ſua per ipſum Circa ſectam ſuam in hac

Quale jus. parte appoſit. ad v l. Et pro Mis. & Cuſtag. ill. ad xl s. Et ſuper hoc recognit. præd. querit qual. jus præd. E. habet in Tenementis præd. & quis anteceſſor. ill. fuit in ſeiſin. inde

Colluſio. ut in jure ſua propria (**being in Caſe of a Biſhop**) Et ſi habeatur aliqua fraus ſive Colluſio inter partes præd. contra formam Statut. quo cavetur ne Terr. ſive Tenement. ad manum mortuam deven. quoquo modo prolocut. & quant. Tenement. præd. cum pertinen. val. per Annum juxta verum valor. dicunt quod præd. Epus. & omnes predeceſſor. ſui Epi. Eccleſiæ Cathedral. ſuperdict. fuer. ſeiſit. de Tenement. præd. cum pertinen. in dominico ſuo ut de feodo & in jure Eccleſiæ præd. a tempore quo non, &c. quouſque præd. A. B. & C.

ipſum

ipſum nunc Epum. inde injuſte & ſine judicio ac vi & armis diſſeiſiver. Et quod quidam R. quond. Epus. Eccleſiæ præd. fuit ſeiſit. in jure Eccleſiæ ill' de Tenement. præd. cum pertinen. tempore E. nuper Regis Angliæ, &c. Et quod non habetur aliqua fraus ſive Colluſio inter partes præd. contra formam Statut. præd. prælocut. & quod Tenement. præd. cum pertinen. valent per Annum in omnibus exitibus ultra repriſ. juxta verum valorem eorund. iij l. Ideo conſideratum eſt quod præd. Epus. recuperet ſeiſinam ſuam de Tenement. pd. cum pertinen. in querel. pd. ſpecificat. per viſum recognitor. ejuſdem Aſſiſæ ad damnum ſuum præd. in triplo ſecundum formam Statut. in humod. Caſu proviſ. per Recognitor. pd. in forma pd. aſſeſs. qu. quidem damna in triplo ſe atting. ad, &c. Et pd. A. B. & C. in mia. &c. Judgment.

Note, this is not an intire Record, but ſeveral, to ſhew the ſeveral Forms as you may diſcern, becauſe the Verdict does not agree with the Title.

Note, if the Tenant in Aſſiſe plead Joynt-tenancy by Deed, a Scire fac. ſhall be awarded againſt the other Joynt-tenant, and the Aſſiſe ſhall be adjourned, and the other Joynt-tenant ſhall be made party by the Statute of Conjunctim Feoffatis, but if he plead it by Will without Deed, it ſhall be tried by the Aſſiſe immediately, 27 Aſſ. 10. & 20. Vid. 22 Aſſ. 1. that he ſhall not have the Plea of Joynt-tenancy generally. Joynt-tenancy pleaded.

FINIS.

A

TABLE

OF THE

General Heads

IN THIS

BOOK.

LIB. I.

	Fol.
INtroduction.	
CAP. I. *Of Real Actions in general.*	1
Cap. II. *Of Summons.*	4
Cap. III. *Of Attachment.*	8
Cap. IV. *Of Diſtreſs.*	11
Cap. V. *Eſſoin.*	14
Cap. VI. *Of Default before Appearance.*	19
Cap. VII. *Of Grand Cape.*	20
Cap. VIII. *Of Saver default.*	23

A Table of the General Heads

Cap. IX. *Of Summons and Severance.* 26
Cap. X. *Of Non-tenure.* 28
Cap. XI. *Of Joynt-tenancy.* 31
Cap. XII. *Of Soletenancy.* 33
Cap. XIII. *Of Several Tenancy.* 34
Cap. XIV. *Of Imparlance.* 36
Cap. XV. *Of View.* 37
Cap. XVI. *Essoin after Appearance.* 42
Cap. XVII. *Voucher.* 43
Cap. XVIII. *Aid praier.* 60
Cap. XIX. *Essoin after pleading.* 63
Cap. XX. *Default after Appearance.* 64
Cap. XXI. *Departure in despite of the Court.* 67
Cap. XXII. *Receit.* 69
Cap. XXIII. *Judgment.* 73
Cap. XXIV. *Of falsifying a Recovery.* 76

LIB. II.

CAP. I. *Of particular Real Actions in general.* 82
Cap. II. *Of a Writ of Right in general.* 85
Cap. III. *A Writ of Right Patent.* 87
Cap. IV. *A Writ of Right Close.* 116
Cap. V. *Writ of Right in* London. 117
Cap. VI. *Writ of Right of Dower.* 118
Cap. VII. *Writ of Right de Rationabil parte.* 119
Cap. VIII. *Writ of Right of Advowson.* 121
Cap. IX. *Writs of Right in their nature.* 125
Cap. X. *Ne injuste vexes.* 126
Cap. XI. *Nativo habendo.* 127
Cap. XII. *Quo Jure.* 129
Cap. XIII. *De rationabilibus divisis.* 130

Cap.

Cap. XIV. *Bre de recto Custod Terræ & hared de Consuetudinibus & Servitiis, Sur disclaimer, Cessavit, Escheat, & de Medio.* 131
Cap. XV. *Secta ad Molendinum.* 137
Cap. XVI. *A Formedon in general.* 139
Cap. XVII. *A Formedon in Descender.* 140
Cap. XVIII. *Formedon in Remainder.* 151
Cap. XIX. *Formedon in Reverter.* 154
Cap. XX. *Proceedings in a Formedon, how they be managed and delayed.* 157
Cap. XXI. *Delays in* Chester *in these Actions.* 160
Cap. XXII. *Pleas in Formedons.* 163
Cap. XXIII. *Dower unde nihil habet.* 166
Cap. XXIV. *Pleas in dote unde nihil habet.* 169

LIB. III.

CAP. I. *Of Writs of Entry in general.* *Fol.* 172
Cap. II. *A Writ of Entry in nature of an Assise.* 174
Cap. III. *Pleadings in a Writ of Entry in nature of an Assise.* 179
Cap. IV. *Writ of Intrusion.* 181
Cap. V. *Pleas in this Action.* 184
Cap. VI. *Cui in vita.* 185
Cap. VII. *Cui ante divortium.* 188
Cap. VIII. *Dum non fuit Compos mentis.* 189
Cap. XI. *Entry ad Communem Legem.* 190
Cap. X. *Dum fuit infra ætatem.* 193
Cap. XI. *Ad terminum qui præteriit.* 195
Cap. XII. *Causa matrimonii prælocuti.* 197
Cap. XIII. *Entry in Casu proviso.* *Ibid.*
Cap. XIV. *Sine assensu Capituli.* 199

Cap. XV. *Entry in Consimili Casu.* Fol. *Ibid.*
Cap. XVI. *Ayel, Besayel, Cozenage.* 200
Cap. XVII. *Nuper obiit.* 204
Cap. XVIII. *Assise of Mortdancester.* 206
Cap. XIX. *Assise of Novel disseisin.* 210
Cap. XX. *Juris Utrum.* 221

LIB. IV.

CAP. I. *Quare Impedit.* Fol. 223
Cap. V. *Quod permittat.* 237
Cap. VI. *Warrantia Chartæ.* 240
Cap. VII. Curia claudenda. 242
Cap. VIII. *Partitione facienda.* 244
Cap. IX. *A Writ of Covenant to levy a Fine.* 247
Cap. X. *Writ of Deceit, Quod ei Deforceat, Attaint, forcible Entry, Redisseisin, Post disseisin.* 252
Supplement *to an Assise of Novel disseisin.* 262

A TABLE OF THE MATTERS Contained in this BOOK.

A.

Advowſon.

1. A Writ of Right of Advowſon. 121
2. What was a Uſurpation at Common Law. *ibid.*
Purchaſers when they could not have a Writ of Right of Advowſon. 122
Proceſs in a Writ of Right of Advowſon. *ibid.*

A.

Actions.

When Actions are given by Implication by Statutes. 258, 259
Actions Real, their ſeveral diviſions and denominations, *vid.* Writs.
Of Real Actions in general. 1
Where to be ſued forth. *ibid.*
Where one may have election

on what Actions to bring, *ibid.* and 94
A Rule in election of Actions. 4
In what County to be laid. *ibid.*

Age.

The inſpection of an Infant entred. *Vid. Inſpection.* 147
Age not to be allowed to a Tenant in Dower, *unde nihil habet.* 167
Where the Parol ſhall demur when an Infant is Vouched. 47
The Parol ſhall not demurr for the Non-age of the Demandant in a Writ of *Ayel.* 201

Ad termium qui præteriit.

2. Where it lies, or an Aſſiſe ſince the Statute of *W. c.* 25. 195
The Proceſs. 196

Aid.

Aid praier, what. 60
The kinds. *ibid.*
Where to be allowed, and where not. *ibid.* & 244
When to be demanded. 62
Entry of Aid praier. 60, 61
The Form of the Writ of *Summons ad Auxiliandum.* 61
Where Aid ſhall be granted a Second time. 62
What is a good Counterplea of Aid. 63

Abridgment of Plaints.

Where the Plaint in an Aſſiſe may be abridg'd. 290, 291

Attaint.

Where it lies. 255

Aſſiſe of Mortdanceſter.

What, and where it lies. 206
The Points to be inquired in this Action. *Vid. Inquiry.* 207
The Proceſs in this Action by Summons and Reſummons. 208
Where this Action may be now at this day in uſe. *ibid.*

Aſſiſe of Novel Diſſeiſin.

What. 210. 262
What things obſervable in the Writ. 411
Of what it lies. *ibid.* and 263
When the Tenant may ſay, *Ven' l' Aſſiſe ſuper Titulum.* 213, 276, 277.
When an Aſſiſe is turn'd into a Common Jury. 213, 214.

When

The Table.

When Title may be made at large, when not. 214, 215

When Title ought to be ſhewn in the Plaint. 270

Things obſervable in Pleading. *Vid. Pleading.*

Where the Aſſiſe ſhall be adjourn'd. 279

The Proceſs in Aſſiſe. 280

For Colout, Certificate, &c. *vid.* their proper Titles.

Abatement, vid. *Writ.*

Attachment.

What. 8

The Form. *ibid.*

May iſſue after an Eſſoin. *ib.*

How *Nient attach* is to be tried. 9

The Entry of Attachment. 12

Pledges to be return'd upon Attachment. *ibid.*

Attachment in *Quare Impedit.* 228

Acceptance.

Where acceptance of Rent by the Wife makes the Leaſe good when the Wife joined in the Leaſe. 188

Ayel.

The Writ of *Ayel.* 201

What may be inquired by the Inqueſt in this Writ. *ibid.*

The Proceſs in this Writ. 203

May be brought at this day. 204

B.

Baſtardy.

Where Baſtardy is pleadable, *vid.* the ſeveral Actions under their proper Titles.

Biſhop.

When a Writ to the Biſhop is to be awarded in a *Quare Impedit.* 231

Battle.

The Entry of waging of Battle in a Writ of Right. 99

Proceedings in waging of Battle. 100

Proceedings in waging of Battle in a Writ of Right of Advowſon. 122, 123

Beſayel, vid. *Ayel.*

C.

Ceſtria.

1. Record in *Cheſter*, 12 *H.* 4. Of a Trial by Certificate by the Biſhop, in Dower *unde*, &c. 168

2. Re-

2. Record in a Writ of *Ayel.* 26 E. 1. 202

3 Record in *Ayel* 26 E. 1. *ibid.*

4. Record in a *Mortdancester*, 26 E. 1. 209

Another. *ibid.*

5. Records in Assise of *Novel disseisin*, 26 E. 1. 217

And E. 4. *ibid.*

6. Record in Assise of *Darrein presentment tempore* E. 1. 220

7. An Original Writ in a *Cessavit* in *Chester*. 35 E. 3. 134

8. An Original in a *Formedon* in *Chester*, 142

9. Records of Actions in *Formedons* in *Chester tempore* H. 4. & H. 5. 146, 147. *&c.*

10. How *Formedons* may be manag'd in *Chester*. 160, 161

11. Record in a *Quare Impedit* in *Chester* of the Advowson of the Church of *Wilmeslow* by *Robert del Bothe*. 6 H. 5. 233, 234, 235

12. Record of the Entry of Inspection of an Infant upon a Voucher in *Chester*. 146, 147

13. What is accounted K's. Silver in a Fine in *Chester*. *vid.* King's Silver.

14. Several Entries of Records in Writs of Right in *Chester tempore* 37 E. 3. 2 Eliz. 38 E. 3. 22 E. 4. 3 H. 5. p. 12. *usque* 25

15. Record and Entry of an Essoin in *Chester*. 17

16. The Entry of a *Grand Cape* in *Chester*, 32 H. 6. 23

17. A Writ of Right *Quod Dominus remisit Cur. &c.* in *Chester* concerning the Manor of *Northwich*. 91

18. How to proceed where a Vouchee is vouched in *Chester* and hath Lands in *Lancashire*, how the Record is to be remov'd. 58, 59

19. Record in *Chester* 33 E. 3. & 4 H. 5. & 3 H. 5. 65.

For removing a Record from *Chester* into *Lancashire*. 58

20. Entry of Imparlance in *Chester*. 36

21. A Writ to the Bishop of *Litchfield* and *Coventry* to Certifie in a Writ of Dower, *unde nihil habet* upon *ne unques accouple* pleaded in *Chester*, and Return'd *tempore*, 12 H. 4. 168

C.

Count.

Where an Estate Tail may be alledg'd in a Writ or Count as a Demise. 187

2. In a Real Action the Demandant Counts not to Damages. 75

Vid. Damages.

3. The Form of the Count in a Writ of Right. 94

4. Count in a *Formedon* in Remainder needs not mention by

by *profert*, &c. the Deed of Gift. 153
Vid. Monſtrans des Faits.
5. Where the Writ may be general and the Count ſpecial in a *Formedon* upon the Statute of Uſes. 165
6. Where both the Writ and Count may be general, and the Replication ſpecial. *ibid.*
7. Count in Intruſion. 181
8. Count in Aſſiſe of *Mortdanceſter.* 208
9. Where how Heir muſt be ſhewn in the Count. *ibid.*
10. Where the Title muſt be ſet forth in the Count in a Writ of Entry *ſur diſſeiſin.*
11. Where, and how a Preſentment muſt be alledg'd in the Count in a *Quare Impedit.* 227
12. Where the manner of Avoydance muſt be ſhewn in the Count in a *Quare Impedit.* 228
13. Two Counts in a *Ne injuſte vexes.* 126
14. Two Counts in a *Quo jure.* 129
15. The reaſon why in Counts in *Formedons* it's ſaid, (*deſcendit jus*) though the Anceſtour died ſeis'd. 145

Challenge.

1. Challenge of the Knights returned in a Writ of Right. 97
2. Challenge in a Writ of Right of the Knights, how to be tried. *ibid.*

Colour.

1. Where Colour muſt be given in pleading a Deſcent. 179
Vid. Pleading.
2. Colour in an Aſſiſe, where. 275, 276

De Conſuet. & Servitiis. 132, 133

Ceſſavit.

1. Ceſſavit, what. 133
2. Where the Tenant muſt tender all Arrearages and give Security. *ibid.*
3. The Proceſs in Ceſſavit. 134
4. Where a Formedon and not Ceſſavit lies. 135

Cui in Vita.

1. What. 195
2. The kinds. *ibid.*
3. Where a Recovery ſhall be accounted as a Demiſe by the Husband. 186

Cui ante divortium. 188

Cauſa Matrimonii prælocuti. 197

Cozenage. vid. *Ayel.*

The Table.

D.

Diſtreſs.

1. What. 11
2. When to be awarded. *ibid.*
3. Grand Diſtreſs in a *Quare Impedit.* 228
4. The Writ. *ibid.*
5. The kinds. *ibid.* & 13
6. Where a Grand Diſtreſs ſhall iſſue in lieu of a *Petit Cape* or *Grand Cape.* 13, 64
7. The difference between a Grand diſtreſs and the ordinary. *ibid.*
8. The Return of the *Diſtringas.* 12, 13
9. Judgment upon a *Diſtringas*, where given upon a *Grand* or *Petit Cape.* 13
10. The Entry of a *Diſtringas*, and of Judgment upon Default after and befote Appearance. 12

Default.

1. If one Demandant make default and Tenant make default, before appearance, what Proceſs ſhall iſſue. 20
2. Where a *Sequend' ſimul* ſhall be awarded in ſuch Caſe. *ibid.*
3. *Saver default* in a *Grand Cape*, how and when. 21
4. *Saver default*, what, 23
5. When default is to be ſaved. *ibid.*
6. Cauſes of ſaving default. *ibid.*
7. Where upon a default a *Diſtringas ad reſpondend'* ſhall iſſue. 24
8. Where the Demandant may releaſe the default. *ibid.*
9. Where the Writ ſhall abate upon the default ſaved. *ibid.*
10. Where a Plea ſhall be allow'd before the default ſaved. 25
11. The Entry of *Saver default* by waging Law, *Non Summons.* 25, 26.
12. Default after Appearance, how many ways. 65
13. No Inqueſt to be taken by default in Real Actions. *ibid.*
14. Upon default after Appearance in a *Quare Impedit*, a Writ to the Biſhop and not a *Diſtringas* in lieu of a *Petit Cape.* *ibid. vid. Qu. Imp.*
15. Entry of Default and Judgment upon a *Grand Cape.* 19
16. Entry of Default and Judgment after an Eſſoin without a *Grand Cape.* *ibid.* 20
17. Default of the Huſband is the default of the Wife. *ibid.*

Dum non fuit Compos mentis. 189

Where a Man cannot ſtultifie himſelf. 190

Depar-

The Table.

Departure in despite of the Court.

1. What. 67
What not. *ibid.*
2. Entry of Departure in despite of the Court. 68
3. Difference between a *Retraxit*, which is a departure by the Demandant and a Non-suit. 68
Vid. Non-suit.

Damages.

1. Where Damages and Costs are to be given in Real Actions. 74, 75
2. None given at Common Law. *ibid.* 75
3. When a Writ of Inquiry of Damages shall be awarded in Real Actions. *ibid.*
4. No Counting to Damages in Real Actions. 74
5. The Form of the Writ of inquiry of Damages. 76
6. Where Damages are recoverable in an Assise of *Novel disseisin*. 287
7. Where in a Writ of Dower. 168
8. A Writ of Inquiry of Damages in Dower. *ibid.*

Defence.

1. Defence in a Writ of Right. *Vid.* Pleading.
2. None in Dower. 118

Disclaimer. 133

Dower unde nihil habet. 166

1. The Original and Process. *ibid.*
2. A Writ of Right of Dower. 118
3. No defence in Dower. *ibid.*

Demy Mark.

1. When it is to be tendred in a Writ of Right. 98
Vid. Right.
2. Whether it needs to be tendred at this Day. *ibid.*

Dum fuit infra ætatem. 193

1. Where the Infant is put to this Action at this Day. *ibid.*
2. The Process. 194

Disseisin.

1. Who shall be a Disseisor. 285,286
2. What is a Disseisin at the election of the Plaintiff. *Ibid. vid.* Assise.

Disclaimer. 133

Deceit.

1. The VVrit of Deceit where it lies. 251

2. The Process. 252

E.

Essoin.

1. Essoin, what. 14
2. The kinds. *ibid.*
3. Where allowable. 15
4. Where the Essoiner must be sworn. *ibid.*
5. Where an Essoin shall be turn'd to a Default. 16
6. Where it shall be Challeng'd. *ibid.*
7. Fourching by Essoin, what. *ibid.*
8. The Entry of an Essoin. 17
In *Chester*. *ibid.*
9. Entry of the Essoin of the Demandant. 18
10. Essoin in wager of Law of Non-summons. 24
11. Essoin lies not in Assise nor in *Mortdancester*. 214, 223
12. Where it lies in Dower *unde nihil habet*. 166
13. Essoin upon a Writ of View. 47, 48
14. Upon judicial Process. 41, 64
15. Where Tenant and Vouchee may have each one Essoin. 6
16. Statutes concerning Essoins. 64
17. Every Tenant may have one Essoin. *ibid.*
18. Essoin of the Champion, and his Master in a Writ of Right. 100
19. When in a Writ of Right. 92

Entry ad Communem Legem. 190

1. The Form. 191
2. The Process. 192
3. Where this or a *Mortdancester* may be brought. 191

Entry in Casu proviso. 197

1. The difference between this and Entry *ad Communem Legem*. 197, 198
2. The Process. 198

Entry in consimili Casu. 199

Entry.

1. Writs of Entry in general. 172
2. The degrees in Writs of Entry. 172, 173
3. Where the Writ of Entry in the Post lies. 173
4. The several kinds. 174
5. Where one shall be said to be within the Degrees. 175
6. The Action of Forcible Entry. 257
7. The Writ of Entry in nature of an Assise. 174, 175
8. By whom may be brought 177
9. In what Case an Assise, and where a Writ of Entry *sur disseisin* was usually brought. 178
10. Where Entry may be for Forfeiture upon Alienation. 151, 152

The Table.

Election.

1. VVhere in Assise a Man shall make election of his Tenant. 277, 278

Evidence.

1. The Tenant in a VVrit of Right is to begin his Evidence. 98

2. A Remitter cannot be given in Evidence upon the issue of *Ne unques seise*, &c. 169

Exples.

To be alledg'd both in Donor and Donee in a *Formedon* in *Reverter*. 156

F.

Forfeiture.

VVhere by Tenants for Life by Alienation. 197, 199, 200

Fine.

1. The nature of a VVrit of Covenant to levy a Fine. 247

2. King's Silver, what in *Chester*. 248

3. The several sorts of Fines. 249

4. *Quid juris clamat*, where it lies. *ibid.*

Formedon.

1. The nature of a *Formedon*. 139

2. The Kinds. *ibid.*

3. *Ex-descender* what. *ibid.*

4. The Form of the VVrit. 141

5. Original in *Chester*. *ibid.*

6. VVhere the Demandant must be Heir to him that was last seis'd. 143

7. VVho need not be named in the VVrit. *ibid.*

8. VVhen to Count. 144

9. VVhere the Ancestour must be named Son and Heir. 143, 144

10. The reasons why it's said (*descendit jus*) in the Count though the Ancestour died seis'd. 145

11. Records of Actions in *Formedons* in *Chester*, *vid. Cestr.*

12. *Formedon en Remainder*. 152

13. VVhether it lay at Common Law. 151

14. VVhere the Remainder Man shall have a *Formedon* in *Reverter*, and not in *Remainder*. *ibid.*

15. VVhere all the mean Remainders must be named in the VVrit. *ibid.*

16. *Formedon in Reverter*. 154

17. Lay at Common Law. *ibid.*

18. VVho

18. VVho are not to be omitted in the Pedigree. 155
19. VVho need not be named on the part of the Donee. 155, 156
20. How Proceedings in *Formedons* may be managed to the utmoſt delay both at *Weſtminſter* and *Cheſter*. 157, 158, 159, &c.

Force vid. *Entry*.

G.

Grand Cape.

1. VVhen to be awarded. 8
2. Veiors in a *Grand Cape*. 21
3. The VVrit. *ibid.*
4. VVithin what time returnable. 22
5. VVhere the Tenant ſhall loſe the Land upon Return of (*Nul habet Terr.*) *ibid.*
6 VVhere Judgment ſhall not be given preſently upon the *Grand Cape* or *Petit Cape*, where ſome appear. *ibid.*
Vid. Judgment.
7. The Entry of *Grand Cape* in *Cheſter*, 32 H. 6. 23
8. VVhere Judgment ſhall be given without a *Grand Cape*, *vid.* Judgment.

I.

Judgment. 81

1. VVhere may be given, as upon a *Petit Cape* or *Grand Cape*. 12, 65
2. Judgment upon a *Grand Cape*. 19
3. Where Judgment ſhall be given preſently upon a *Grand Cape* or *Petit Cape*, where ſome appear. 22
4. Where not to be Entred till the Points of the Writ be inquired. 74
5. How to be Entred where a Writ of Inquiry is firſt to be awarded. *Vid. Damages*.
6. Judgment in a Writ of Right. 101
7. The Entry of Judgment upon default at the Return of the Grand Diſtreſs in a *Quare Impedit*, 232
8. Where there are Two Judgments, as in *Partition faciend'*. 245
9. Where Judgment ſhall not be in ſeveralty. 206

Joynt-tenancy.

1. What. 31
2 Where it abates the Writ. *vid. Writ*.
3. Where in pleading joynt-tenancy by Deed there muſt be a *profert hic in Cur'*, *vid. Pleading*.
4. Where in pleading Joynt-tenancy it muſt be ſhew'd of whoſe gift, and the difference between Joynt-tenancy and Non-tenure in Pleading, *vid. Pleading*.
5. VVhy Joynt-tenancy abates

abates the VVrit. 31

Inqueſt.

1. No Inqueſt to be taken by default in Real Actions. 65
2. The Points to be inquired in a *Mortdanceſter*. 207 *Vid.* Aſſiſe of *Mordanceſter*.
3. VVhere not to be inquired. *ibid.*
4. A VVrit of Inquiry in a *Quare Impedit*. 231
5. VVhat may be Inquir'd in a VVrit of *Ayel*. 201
6. VVhere the Sheriff is to Return an Inquiſition upon the Original. 252
7. VVhere Force ſhall be inquir'd or not by the Inqueſt. 259, 288
8. VVhat matters are inquirable in an Aſſiſe of *Novel diſſeiſin*. 284

Imparlance.

1. VVhat. 36
2. The Kinds. *ibid.*
3. Tenant or Demandant may Imparle. *ibid.*
4. Imparlance in *Cheſter*. *ibid.*
5. VVhere it may be after View and Eſſoin. 94
6. Imparlance in *Formedon*. 146
7. He that is received cannot Imparle. 70

Indicavit.

VVhat and where it lies. 123, 124

Intruſion, vid. *Age*.

Infant, vid. *Age*.

VVhen he ſhall be a Diſſeiſor. 286

Intruſion.

1. The VVrit of Intruſion. 181
2. The Counts in Intruſion in ſeveral Caſes. 182, 183

Indicavit.

Where it lies. 123, 124

K.

King's Silver.

VVhat is accounted the King's Silver in *Cheſter* in a Fine. 248

L.

Leaſe.

1. VVhere a Recovery by default of the VVives Land againſt the Husband ſhall be accounted as a Demiſe by the Husband. 186 *Vid. Cui in Vita.*

2. VVhere

The Table.

Where a Gift in Tail may be alledg'd as a Demiſe in a VVrit or Count. 187 *Vid. Tail.*

M.

Miſe.

Miſe joyned in a VVrit of Right without a Replication. 96 *Vid. Pleading.*

Monſtrans de faits.

VVhere the Count in a *Formedon* in *Remainder* needs not ſhew the Deed by *profert*, &c. 153

Meſne.

1. *Meſne.* 136
2. The Proceſs in a Writ of *Meſne.* 137

N.

Non tenure.

1. What. 28
2. The Kinds. *ibid.*
3. What abates the Writ, *vid.* Writ.
4. How to be pleaded, to ſhew who is Tenant. 29 *vid.* Pleading.
5. In what Actions (Non-tenure) is not pleadable. 30
6. How Non-tenure muſt be pleaded of a Rent, and where *de Tenement' in viſu poſit'*, and where *de Terr' petit' Vid.* Pleading.

Non Compos mentis.

Vid. Dum non fuit Compos, &c.

Nativo habendo. 128

Ne injuſte vexes. 126

Non-ſuit.

1. Difference between a Non-ſuit and *Retraxit.* 68
2. Where the Demandant ſhall not be Non-ſuited though he would. *ibid.*

Nuper obiit.

1. The difference between this and the Writ *de Rationabili parte.* 205

Oath.

1. Oath of the Four Knights in a Writ of Right. 98
2. Of the Jury in a VVrit of Right. *ibid.*
3. Of the Champions in a VVrit of Right. 100

P.

Præcipe vid. *Writs.*

The Table.

Proceſs.

In ſeveral Actions, what. 8, 9

Pledges.

1. The meaning of returning Pledges upon Attachment. 12 *Vid. Attachment.*

2. Where Pledges are to be amerced. *ibid.*

Pleading.

1. Where a Plea ſhall be allow'd before a default ſaved in a Real Action. 24

2. Where in Pleading *Non-tenure* it muſt be ſhew'd who is Tenant. 29

3. How *Non-tenure* is to be pleaded of a Rent, and where it muſt be ſaid *de Tenement' in viſu poſitis*, and where *de terr' petitis*. 30

4. Where in pleading Joynt-tenancy by Deed there muſt be a *profert hic in Cur'*. 31

5. What Pleas he that is receiv'd, may plead. 70, 71

6. Faint Pleading what. 72

7. Defence in a Writ of Entry. 74

8. The pleading to the Grand Aſſiſe in a Writ of Right. 96

9. How the *Miſe* muſt be joyn'd in a Writ of Right. *ibid.*

10. Pleading in *Formedons*. 164, 165

11. Every Stranger may plead a Warranty by way of *Rebutter*. 165

12. Pleas in a Writ of Entry *ſur diſſeiſin*. 179, 180

13. Pleas in a Writ of Intruſion. 181, 182

14. A peculiar manner of Pleading (in *Abatement*) *Non-tenure*, in *Intruſion*. 184

15. Where a *Traverſe* may be upon a *Traverſe*. 184

16. Pleading in *Ayel*, *Cozenage*, *Beſayel*. 203, 204

17 Where a Releaſe with Warranty is no Plea without traverſing the dying ſeiſed.

18. Where in pleading Joynt-tenancy it muſt be ſhew'd of whoſe Gift, 32

19. Difference between pleading Joynt-tenancy and Non-tenure. *ibid.*

20. Rules of pleading Sole-tenancy. 33

21. Where in pleading Sole-tenancy the Demandant muſt maintain his Writ. *ibid.*

22. Where in pleading Sole-tenancy the Writ ſhall abate againſt one, and not the other. *ibid.*

23. Where one diſclaims, another pleads Sole-tenancy, and another makes default, what is to be done. 34

24. Where Sole-tenancy may be pleaded without pleading over in barr. *ibid.*

25. In pleading Several-tenancy, muſt plead over in barr or vouch. 35

26. Where to be pleaded after waging of Law. *ibid.*

27. In what Actions it

may be pleaded. *ibid.*
28. After Imparlance no Plea to be allowed to the Writ. 36
29. Where a Plea to the Writ may be after View. 39
30. What Pleas the Vouchee may have, entring into Warranty. 47
31. Where Assignee that Vouches must shew a Deed, where not. 49
32. Pleas in a *Cui in Vita.* 188
33. Pleading in a Writ of Right. 111, 112
34. Pleas in Bar in a Writ of Right. 112, 113, 114
35. Sometimes better to plead in barr than joyn the *Mise* upon the meer Right. 115, 116
36. Pleading in a *Rationabili parte.* 119
37. In a Writ of Right of Advowson. 124
38. In *Ne injuste vexes.* 126
39. In a *Quo jure.* 130
40. In *Rationabilibus divisis.* *ibid.*
41. Barr in a *Cessavit.* 134
42. In *Medio.* 137
43. In *Secta ad Molendinum.* 138
44. *Remitter* pleaded in Dower *unde*, &c. 170
45. In a Writ of Entry in nature of an Assise. 179
46. Where Colour must be given in pleading a Descent, and other Cases. 179, 180
47. Where the Tenant may plead there was no Tenant to the *Præcipe.* 180
48. Pleading in a *Nuper Obiit.* 205, 206
49. In Assise of *Mortdancester.* 208
50. Things observable in pleading in an Assise of *Novel disseisin*, as Colour, Title at large, &c. by Baily. 214
51. In abatement in Assise. 268
52. What Pleas a Disseisor shall have, what a Baily, 271 what the Tenant. 272
53. Pleas in a *Quare Impedit.* 236
54. Rules of Traversing any part of the Count in a *Quare Impedit.* 237
55. Pleas in *Quod permittat* 239
56. In a *Warr' Chart.* 241
57. In *Cur' Claudenda.* 243, 244
58. The Form of pleading, and several Entries in an Assise of *Novel disseisin.* 292, 293, &c.

Petit Cape.

1. Where it shall be awarded. 64
2. The Form of the Writ of *Petit Cape.* 66
And the Return. *ibid.*
Partitione facienda. 244
The Process. 245
Per quæ Servitia. 249
Where it lies. 249

Post.

Post disseisin.

Where it lies, and the proceeding in it. 260

Plaint.

Where Plaint in an Assise of *Novel disseisin* shall be abridg'd 290

Q.

Quem redditum reddit.

Where it lies. 250

Quare Impedit.

1. Where given by Statute *W.* 2. *c.* 5. 121

2. Where plenarty shall not abate the Writ. 121, 122, 170

3. VVhere it lay at Common Law. 224

4. VVhat Persons were relieved by Statute, *W.* 2. *c.* 5.

5. The Points to be inquired in a *Quare Impedit.* 225

6. *Ne admittas.* 226

7. Process in *Quare Impedit* 228, 229

8. VVhere the Defendant may be Actor. 230

9. How the Presentment and other matters must be alledg'd in the Declaration, 227 *Vid. Count.*

10. VVhere a VVrit shall be awarded to the Bishop in a *Quare Impedit.* 65, 229, 230

Quo Jure. 129.

The Process. *ibid.*

Quod permittat. 237

Quod ei deforceat. 253

VVhere it lies upon default by *Nihil dicit.* *ibid.*

R.

Right.

1. Summons *ad eligend* 4 Knights in a VVrit of Right. 96

2. VVhere the *Demy Mark* is to be tendred in a VVrit of Right. 98

Vid. Demy mark.

3. Battle in a VVrit of Right. *Vid. Battle.*

4. The Form of Entring all Proceedings in one entire Record in a VVrit of Right. 102, 103

5. Several Entries of Records in *Chester* in a VVrit o Right, 104, *&c.* 113

6. A VVrit of Right Close. 116

7. VVhere Four ordinary Men may return the Grand Assise. 117

8. A VVrit of Right in *London.* 118

9. Not removeable by *Tolt. ibid.*

10. A Writ of Right of Dower. *ibid. Vid. Dower.*

11. Writ of Right *de rationabil parte.* 119

12. Of Advowson. 121 *vid. Advowson.*

13. *Rationabilibus divisis.* 130

14. Right *Custod' terr' & hæred'.* 132

15. How a Writ of Right is different from other Actions. 85

16. The several kinds. 86, 87

17. To whom to be directed. 88
18. The Form of the Writ of Right Patent. *ibid.*
19. *Pone* in a Writ of Right 90
20. The Form of the *Pone*. *ibid.*
21. *Recordari* in a Writ of Right. 91
22. Where it may be brought immediately returnable into the *Common Pleas* by Writ *Quia Dominus remisit Cur'* *ibid.*
23. Letter of License to bring the Writ in the *Common Pleas* where needful. *ibid*
24. The Form of the Writ *Quia Dominus*, &c. 91, 92 in *Chester*.
25. The kinds of Trial in a Writ of Right. 95 *vid. Trial.*
26. Grand Assise. 96
27. The Process after the *Mise* joyn'd in a Writ of Right. *ibid.*
28. *Tolt* in a Writ of Right. *vid. Right.*
29. The Writ of Right where it was to be brought when the Alienations were beyond the degrees. 172, 173

Recovery.

1. How a Recovery may be falsified. 77
2. The Causes of falsifying. 77, 78, &c.
3. Where Termors may falsifie. 80
4. Rules for falsifyng Recoveries. 80, 81
5. Where a Recovery by default against the Husband of the Wife's Land shall be accounted as a Demise by the Husband. 186 *vid. Lease.*
6. Where Recovery in value shall be from the time of the Voucher, or from other time, as *Test* of the *Warrantia Chartæ*. 240, 241

Receit. 69.

1. Where a Termor may be receiv'd, though he be Party to the Writ. 69, 70
2. To What Cases the Statute of *W.* 2. *c.* 3. extends. 70
3. The Form of Entry of Receit. 78, 79
4. Receit upon a *Petit Cape* and *Grand Cape* Returned. 70, 71
5. Counterplea of Receit. 72
6. The Form of Entry of the Counterplea. *ibid.*
7. The time of Receit. 70
8. What Pleas he may plead who is receiv'd *vid. Pleading.*

Remitter.

Remitter pleaded in Dower *unde*, &c. 170
Vid. Pleading.

Return.

1. Return of *Distringas*. 12, 13
2. Of Attachment. 9
3. Of *Grand Cape*. 23
4. Return of (*Null Terr'*) in

in Grand Cape, where the Tenant shall lose the Land. 22

Recognisans.

1. Where it lies. 260
2. The Proceedings in it. 260, 261

S.

Summons.

1. By whom, and how Summons is to be made. 4
2. 15 Days to be between Return of Summons and Test' of the Writ. 5
3. Summons requir'd in some judicial Writs. 6
4. Where a Person may be summon'd (*Vers. pesire*) though he be not in Possession. *ibid.*
5. Entry of Summons. 7
6. Upon a *Tarde* Return'd. *ibid.*
7. May be by Lands, Goods or Person, and when. *ibid.*
8. Wager of Law of Non-summons, *vid. Wager of Law.*
9. Summons and Resummons where it must be. 7

Summons and Severance.

1. Where, in what Actions. 26, 27
2. The Kinds. 27
3. The Entry of Summons and Severance. *ibid.*

Sequendum Simul.

Where it shall Issue upon default of the Demandants. 20

Secta ad molendinum. 137

Scandalum

The Actions given by the Statute by Implication. 258

Seisin.

What is a good Seisin to have an Assise. 284

Sole Tenancy. 33.

1. What. *ibid.*
2. Rules for pleading Sole-tenancy. *vid. Pleading.*
3. Where there are several Tenants, and one pleads Sole-tenancy, and the other Non-tenure, the Writ shall abate but against him that pleadeth Non-tenure. *Vid. Writ.*
4. Where one pleads Sole-tenancy, another disclaims, and another makes default. what is to be done. *Vid. Pleading.*
5. Where Sole-tenancy is to be pleaded without pleading over in Barr. 34 *Vid. Pleading.*

Several Tenancy.

1. What. 34
2. How to be pleaded and where. *Vid. Pleading.*
3. In what Actions it may be pleaded. *ibid.*

Sine assensu Capituli. 199

T.

1. Rules for Traversing any part of the Count in a *Quare Impedit.* 237 *vid. Pleading.*
2. Where

Quare impedit. 237
vid. Pleading.
2. Where the dying ſeis'd muſt be travers'd. 203
3. When the Seiſin needs not be travers'd in pleading a Fine or Recovery. 208

Tail.

Where a Gift in Tail ſhall be alledg'd as a Demiſe in a Writ or Count. 187

Tenure.

All Tenures now are Common Soccage. 135

Trial.

1. Trial by Proofs, where. 167
2. By Certificate from the Biſhop. 167, 229
3. By Doomſeday Book. 283
4. How (*Nient attach*) is to be tried. 9
5. The Kinds of Trial in a Writ of Right. 95, 99, 106, 101
6. Of Baſtardy by Archdeacon of *Litchfield* and *Coventry*. 203

Tolt.

Tolt in a Writ of Right. *Vid. Right.*

Tales.

Tales not grantable in an Aſſiſe. 283

V.

View.

1. What. 37
2. Where not grantable. *ibid.*
3. Counterples of View, *ibid.* & 41
4. Whether View lies in Dower *unde nihil habet*. 38
5. The Kinds of View. *ibid.*
6. Where View may be of another thing than that demanded. 39
7. The Form of the Writ of View. 40
8. The Return. *ibid.* 41
9. When to be demanded in a Writ of Right. 93
10. The Form of the Writ of View in a Writ of Right. 94
11. Of the Recognitors in an Aſſiſe. 283

Voucher. 43.

1. VVhat. *ibid*
2. How it may be loſt by not pleading Joynt-tenancy. 32
3. The manner of Vouching upon Record. 43
4. The Forms of ſeveral VVrits and Proceſs in Voucher. 44, 45
5. The Entry of the *Cap' ad Valenc'* and *al' plur'*, *ſequatur ſub ſuo periculo*, *ibid.*
6. The Tenant is to ſue forth the *al' plur'* *ibid.*
7. VVhere the Land ſhall be loſt upon the Return of the *Sequatur ſub ſuo periculo*. 46
8. The time of Return of a *Summons ad Warrantizand'* at *Weſtminſter* and at *Cheſter*. *ibid.*

9. VVhat Pleas the Vouchee may have. *Vid. Pleading.*
10. The Proceedings by Inſpection againſt an Infant Vouchee. 48
11. VVhere the Voucher muſt ſhew Cauſe of his Voucher. 48
12. VVhere the Cauſe may be Counterpleaded. *ibid.*
13. Voucher in Dower (*unde nihil habet*) Judgment is given againſt the Heir vouchee and not againſt the Tenant, different from all other Vouchers. 170
14. VVhere it lies not in a VVrit of Entry *ſur diſſeiſin.* 176
15. Lies not in a *Nuper obiit.* 205
16. Where it lies not in Aſſiſe. 214
17. When both Demandant and Tenant may Vouch. 254
18. In a *Quod ei deforc* there can be but one Voucher. *ibid.*
19. Where Aſſignee that Vouches muſt ſhew a Deed, where not. 49
20. Where a Revoucher may be. *ibid.*
21. Where a Stranger may be vouched not Heir to the former Vouchee. 50
22. Counterplea of Voucher what. 50, 51
23. The Kinds. 50
24. What Vouchers muſt be within the Degrees. 51
25. Iſſue of the Counterplea not abated by the death of the Vouchee. 52
26. How to prevent a forreign Voucher. *ibid.*
27. Where Confeſſion of a Forreign Voucher cannot be taken in *Banco.* *ibid.*
28. What are not good Counterpleas. 52
29. The Entry of allowance or diſallowance of the Voucher. 53
30. Counterplea of Warranty, *vid. Warranty.*
31. How to manage a Deed of Vouchers. 57, 58, &c.
32. How to proceed where Vouchee vouched in *Cheſter*, hath Lands in *Lancaſhire*, how the Record is to be removed. 58, 59
33. Records of Vouchers in *Cheſter*, *tempor'* 33 *E.* 3. & 4 *H.* 5. *ibid.* & 3 *H.* 5. 59
34. Whether a Deed muſt be ſhewn in Caſe of a Forreign Voucher. 60

Veiors.

Veiors in a *Grand Cape.* 22

W.

Writ.

1. Where the Writ ſhall abate by ſaving the default. 27
2. Where (*Non-tenure*) abates the Writ. 29
3. VVhat Order ſhall be obſerved in a Real *Præcipe quod reddat.* 11
4. VVhere

4. VVhere (*Quod clam' esse jus*) &c. is to be in the Writ. *ibid.*

5. VVhere the thing is (*Bis petitum*) the VVrit ſhall abate. 2

6. In the VVrit muſt be alledg'd in what Vill the Land lies. 3

7. Muſt always be brought againſt the Tenant of the Freehold. *ibid.*

8. VVhere Joynt-tenancy by Deed or Fine abates the VVrit. 32

9. Why Joynt-tenancy abates the Writ. *ibid. Vid. Voucher* and *Pleading.*

10. Where in pleading Sole-tenancy the Writ ſhall abate againſt one and not the other. *Vid. Pleading.*

11. Several Tenancy abates the Writ. 35

12. May be brought tho' the Entry not taken away. 94

13. Where a Writ may be either Original or Judicial. 255

Warrantia Chartæ. 240.

1. Where it lies. *ibid.*

2. The Proceſs. 241

Warranty.

1. Where a Warranty may be made void by an Entry upon him who has Right, by him who ſhould have had benefit of the Warranty. 241

2. Where a Warranty may be Counterpleaded. 53

And Judgment thereupon. 54

3. Every Stranger may plead a Warranty by way of *Rebutter. Vid. Pleading.*

Wager of Law.

Of Non-ſummons. 25

FINIS.

BRITISH MUSEUM 8 OCT 27